HOUSE OF REPRESENTATIVES—*Wednesday, April 20, 1988*

The House met at 2 p.m.

Rabbi Arnold Mark Belzer, Temple Beth Rishon, Wyckoff, NJ, offered the following prayer:

Lord G-d, Creator of all humanity, Cause love, harmony and peace to abide among us. Cause us to know that in a world faced with monumental challenges that there can be no neutrality—"either we are the ministers of the sacred or the slaves of evil."

Lord during recent generations great evil has been revealed to us. Let us through our lives, be witness to the revelation of goodness.

Lord, we know that we will triumph over evil if we shall be as sacrificial, courageous, and steadfast "in our homes, our schools, and offices, and in our Congress as our soldiers have been on the fields of battle."

Give us strength in moments of temptation. Renew our faith, at times of doubt. Give us courage, in moments of weariness. Hallow our lives with loyalty and integrity.

May our prayers be with us as we face the world and may Your presence in our hearts be reflected in the way we live our lives.

Dear G-d, bless the Members of the House of Representatives their staff people and the pages who serve them. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

REMARKS TO WELCOME RABBI ARNOLD MARK BELZER OF FRANKLIN LAKES, NJ

(Mr. ROE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROE. Mr. Speaker, it is with great pride that I rise today to welcome an outstanding religious leader from my Eighth Congressional District of New Jersey, Rabbi Arnold Mark Belzer of Franklin Lakes, who has offered us a most inspirational message in providing the opening prayer to our session today.

Rabbi Belzer is with Temple Beth Rishon of Wyckoff, NJ, which is also known as the Wyckoff-Franklin Lakes Synagogue. Temple Beth Rishon has served as the spiritual home for a great many worshipers from the greater northwest Bergen County, NJ, area for the past 13 years. I might note that when Rabbi Belzer assumed the leadership of Temple Beth Rishon in 1981, the congregation numbered 125 families. Today, through his dynamic and visionary leadership, that number has risen to 360 families and this fine congregation is still growing. And, in addition to his congregational duties, Rabbi Belzer also serves as east coast director of the Sino-Judaic Institute and as vice president of the Mastery Foundation, an ecumenical organization which trains clergy of all denominations.

Mr. Speaker, along with coming to Washington to offer our opening prayer here this morning, Rabbi Belzer has one other important mission here, to visit his son, Nathan Belzer. Nathan, who I am proud to say is my page here in Congress, has not only been elected president of his page class while maintaining a perfect 4.0 average in his studies, but also has been selected as the Speaker's page, accomplishments of which I know his father and mother are justifiably proud.

I want to invite you, Mr. Speaker, and all of our colleagues to join me in welcoming Rabbi Arnold Mark Belzer to the House this afternoon.

TODDLER TAX CREDIT

(Mr. SCHULZE asked and was given permission to address the House for 1 minute.)

Mr. SCHULZE. Mr. Speaker, child care in America is under scrutiny by Congress, the media, and the American public. Some are claiming critical child care shortages exist and would address this with broad legislation providing for Federal funding and regulation of day-care centers. They would spend billions to assist but a small fraction of American children, primarily from affluent families.

Today, I am offering a better legislative alternative. The toddler tax credit provides a $750 tax credit for each child in America under age 6. This tax cut would support all American children and help offset the erosion of the personal exemption and eliminate the antichild bias in our tax system.

Mr. Speaker, effective child care legislation should not discriminate between home care and day care. The toddler tax credit does not discriminate. Let's provide relief to all families with children rather than spend tax dollars funding bureaucrats.

FOREIGN NURSES AND IMMIGRATION

(Mrs. ROUKEMA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker, thousands of foreign professional nurses who are here in this country to help our hospitals and nursing facilities deal with the severe nursing shortage may now be facing an order to leave the country because a callous Immigration and Naturalization Service is refusing to extend the length of the H-1 visas these nurses are holding.

Hospitals in New Jersey, as in other parts of the Nation, are experiencing a shortfall of skilled medical personnel. Nationally, there are approximately 200,000 skilled nurse positions currently vacant. This already intolerable situation will now be further exacerbated by the perverse and even pernicious policies of the INS.

It is ironic to me that today we will be voting on a bill to extend the blanket amnesty afforded illegal aliens who blatantly circumvented immigration laws while these highly skilled and much needed professionals, who played by the rules, are being told to go home.

The INS policy is shortsighted and needs to be reviewed. I have asked INS Commissioner Nelson to make this a priority effort so that our hospitals will not be forced to curtail medical services or to recruit a new group of nurses who must be retrained and oriented to the operations of the facilities who hire them. I would also urge my colleagues on the Judiciary Committee to look into this matter and find a solution.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1049

Mr. MAVROULES. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1049, the Utility Ratepayer Refund Act.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

AMNESTY EXTENSION—THE AMERICAN THING TO DO

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, extending the immigration deadline for 7 months is the right thing to do. It is the American thing to do. It is a matter of simple justice.

This bill is not a bill for Hispanics; it is not a bill for illegal aliens. It is a vote in the tradition of this country that we are doing the right thing.

Millions of human beings wanting to come out of the shadows have not been able to because of a lack of public education efforts. This bill simply says that we are extending the deadline by 7 months. We are not changing the rules, we are not allowing anyone an extra in, and it simply says to those 2 million around this country that probably have not heard about this program, that probably do not have the facilities to make themselves available of acting financially on this program—it says you have 7 more months.

Mr. Speaker, that is the tradition of this country. That is the spirit in which we pass immigration law and the legalization program. We should extend this deadline because it is the American thing to do, and it is a matter of simple justice.

ANTI-TOY GUN THREAT ACT

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and include extraneous matter.)

Mr. DREIER of California. Mr. Speaker, I rise to encourage my colleagues—on both sides of the aisle—to cosponsor a bill which I am introducing today. This bill, the Anti-Toy Gun Threat Act, will impose a mandatory 5-year prison term for anyone using a toy or imitation firearm in the commission of a Federal crime of violence or Federal drug trafficking crime. This legislation is needed to close a gaping loophole concerning these toy weapons in the Federal criminal statutes.

The Anti-Toy Gun Threat Act would simply apply the same punishment to individuals who use a toy gun to commit a Federal crime which exists for those who use a real gun. Unlike other proposals to address the misuse of toy weapons, my legislation will not infringe on consumer choice or force costly regulations on toy manufacturers. Instead, it will impose a punishment for using a nonfunctioning gun for a criminal purpose.

While seemingly harmless, the use of a toy gun has as great a potential for tragic consequences as the same actions committed with a real firearm. Congress should impose a mandatory prison term to deter the future use of toy or imitation firearms in violent crimes.

AMEND THE WAR POWERS RESOLUTION

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, the President has indicated that recent events in the Persian Gulf do not require him to submit a war powers report to Congress. We must be reading different versions of the United States Code. The War Powers Resolution requires the President to submit a report "in any case in which United States Armed Forces are introduced into hostilities * * *."

Mr. Speaker, when the *Bridgeton* hit a mine last July, that was not considered "hostilities." When U.S. helicopters fired on, and boarded an Iranian minelayer, that was not "hostilities." When U.S. destroyers attacked an Iranian oil platform that apparently wasn't a hostile act, either. But now, even the President's own Secretary of Defense is calling this week's actions in the gulf hostilities.

There can be no doubt that the War Powers Resolution applies here and now. The President is blatantly disregarding his sworn duty to faithfully execute the law and depriving Congress of its legitimate role in the process.

Two months ago, I introduced legislation to amend the War Powers Resolution. We need an effective War Powers Resolution. It's obvious we don't have one. If the President violates the law, our current options are to impeach him or to sit on our hands while he gets the Nation into a war. My bill provides a third avenue. I am asking my colleagues for their support.

PEACE INTO THE 21ST CENTURY

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, this morning at 11 o'clock eastern daylight time, 8 o'clock Pacific daylight time, the beautiful B-2 bomber, or at least an artist's conception of it, was released to the American press, and free world press. I am sure that even this artist's conception of the B-2 Stealth bomber is at this moment being telefaxed to the Soviets in the Kremlin. With bipartisan congressional support the Air Force will develop and procure 132 of these B-2 Stealth bombers. This beautiful aircraft is made by Northrop Aviation of southern California. Many Members have seen the mockup of this aircraft in what was previously a totally top secret program in Air Force plant 42 in Palmdale, southern California.

□ 1415

The Air Force also announced this morning the first flight of the ATB or advanced technology bomber will take place sometime this fall.

I do not know about my colleagues, but I intend to be there at Palmdale when it lifts off, and then lands at Edwards Air Force Base, where flight testing will be conducted. The late Jack Northrop, one of America's aviation geniuses, a terrific man, the designer of the YB-49 "Flying Wing" which was canceled in a scandalous way by a prior administration, is vindicated with this new beautiful flying wing, the B-2 Stealth bomber that will keep the peace and ensure an important capability to penetrate Soviet air defenses well into the 21st century.

IN SUPPORT OF THE CONFERENCE REPORT ON THE TRADE BILL

(Mr. JONTZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONTZ. Mr. Speaker, last Thursday the Commerce Department released the trade deficit figures for February. The United States imported $13.8 billion more than we exported that month. This is the highest trade deficit since last October and should send Congress a strong message about the need to pass the trade bill later this week.

Mr. Speaker, the continuing imbalance between our exports and imports is hurting our Nation and our Nation's working families. By passing the trade bill we can address the causes as well as the consequences of these record trade deficits.

Quite frankly, I think the bill should be stronger. I am disappointed that the Gephardt amendment and the Bryant amendment, in particular, were removed during conference.

But there is still much that is good about H.R. 3, and I urge my colleagues to vote in favor of the conference report on this bill when it comes before the House tomorrow.

APPOINTMENT OF CONFEREES ON HOUSE CONCURRENT RESOLUTION 268, BUDGET FOR THE U.S. GOVERNMENT FOR FISCAL YEARS 1989, 1990, AND 1991

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 268) setting forth the congressional budget for the U.S. Government for fiscal years 1989, 1990, and 1991, with Senate amendments thereto, disagree to the amendments and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. THOMAS OF CALIFORNIA

Mr. THOMAS of California. Mr. Speaker, I offer a privileged motion.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. THOMAS of California moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on House Concurrent Resolution 268, be instructed to negotiate a funding level in the fiscal year 1989 budget resolution that emphasizes the high priority of fighting the war on drugs but that nevertheless continues to comply with the discretionary spending caps and the revenue level agreed to in the budget summit by the President and joint leadership of Congress on November 20, 1987.

The SPEAKER. The gentleman from California [Mr. THOMAS] is recognized for 1 hour.

Mr. THOMAS of California. Mr. Speaker, for purposes of debate only I yield 30 minutes to the gentleman from Pennsylvania [Mr. GRAY], the chairman of the Committee on the Budget.

Mr. Speaker, I have moved that the House instruct the conferees on the fiscal year 1989 budget resolution to stand by the summit agreement which was reached just last November. The motion also calls on the conferees within the boundary set by that summit agreement to continue to recognize the high priority that must be given to fighting the war on drugs. These two goals are not inconsistent. Of course it would be easier and probably far more dramatic to follow the course of the other body and to continue the old pattern of raising spending and raising taxes and do so without examining any kind of limitation on competing priorities.

But such a course not only violates the letter but of course the spirit of the summit agreement.

There are many of us in this body who felt that the summit agreement was not the best approach to the problems facing this Congress. Lukewarm at best might have been an indication of the feeling. I know on my side of the aisle there were a significant number of absolute noes. But once the summit agreement was reached those of us laboring in the Committee on the Budget on both the majority and minority sides felt that the agreement between the administration, the leadership of the Senate, and the leadership of the House must be honored in our structuring of the framework of the 1989 budget agreement.

It was very, very difficult for the members of the Committee on the Budget to do that. It is always difficult when one has unlimited needs and limited resources. Nevertheless I think the exercise was a very commendable one. I especially want to compliment the gentleman from Pennsylvania [Mr. GRAY] the chairman of the Committee on the Budget, and the ranking member, the gentleman from Ohio [Mr. LATTA] for setting out at the beginning of the process on a single sheet of paper what we as Members on both sides of the aisle felt was the meaning of the summit agreement, it was our guiding literature as we discussed priorities.

The Budget Committee broke into subgroups, we had very, very contested discussions, we came together in caucuses, we continued the contested discussions, we went priority against priority, and we did that which was very difficult. But within the spending and revenue levels prescribed by the summit agreement, we fashioned a 1989 fiscal year budget. We did what we thought was the responsible thing. This is the absolute wrong time to abandon that framework that we structured. The pressure is just beginning to add more taxes and to spend more money. We are not at the conclusion of the process, we have barely begun. There are undoubtedly dozens or even more very, very worthwhile, justifiable and, of course, politically attractive items that folks want to add to the budget especially in an election year.

We knew at the time that we set out the agreement to stay within the summit that that would be the case. All of us on the Committee on the Budget are disappointed with the end product and I think that is what the budget process is supposed to produce. It is accommodation, it is compromise, and it is not satiation. What we had to do in a very difficult climate was to accommodate and compromise. There is no question that fighting the war on drugs deserves a high priority. Few in the Congress would disagree with that premise. Even as we struggle to stay within the summit agreement, we prioritized the war on drugs.

If my colleagues will examine the budget document, we have in function after function, placed an emphasis on the war on drugs.

This motion will instruct our conferees when they negotiate with the Senate to continue to recognize the high priority that must be placed on combating the drug problem but to do so within the limits placed on us by the summit agreement.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The gentleman from Pennsylvania [Mr. GRAY] is recognized for 30 minutes.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, with regard to the instruction motion, first let me as chairman of the Committee on the Budget commend the gentleman from California [Mr. THOMAS] for his hard efforts in putting together a budget resolution for the House that was bipartisan and that clearly reflected the kinds of priorities that were needed we feel in this Nation. However, there were three things that we had to do: First, we had to meet the budget summit agreement in terms of the spending caps and revenue figures that were agreed on for a 2-year period; second, we had to meet the Gramm-Rudman-Hollings target; and third, we had to avoid sequestration. This was not an easy task to hit all three targets, but as the gentleman from California knows, we did successfully hit all three of those targets.

We had to make difficult decisions with regard to funding levels. We had to choose between what I like to call the essential, and the desirable. Essential spending needs of the Nation, desirable being those things that we would like to have but in a time of growing red ink we could not afford unless there was an agreement to pay for them, and since we were not able to get more than the $25 billion of new revenues over a 2-year period in the budget summit, that made our job very difficult. As we tried to prioritize and choose between what was essential and what was desirable, certainly there were things that we would like to have done differently. All of us had our priorities, all of us recognized the need for investment in certain areas but because of the limitations that we had we had to make choices. So when we looked at the House position, my colleagues will find that there were significant increases of 10, 12, 13 percent, and in other areas we had a freeze at the 1988 level and in some other areas we actually made cuts below the 1988 level, all in the attempt to meet those three targets which we did.

In the area of drugs and fighting the war on the proliferation of drugs that is taking place in this country and the crimes that are related thereto, the committee came forward and supported a significant increase in funds for the fight with regard to the war on drugs. However, I think what the gentleman from California [Mr. THOMAS] is trying to say with regard to the instruction motion is that whatever is done in conference should be done in accordance with the budget summit, meeting the spending and revenue caps, meeting the Gramm-Rudman-Hollings targets and avoiding sequestration. Therefore, as chairman of the committee I certainly do not have any objection to that statement being made while at the same time saying that we want to do all that we can in waging the war against the proliferation of drugs. Therefore, Mr. Speaker, I as chair have no objection to the

nonbinding instruction and certainly I know that this will put the House on record with regard to making a very strong statement.

I should also point out that as chairman of the Committee on the Budget, in the budget agreement we did say that if there was a national crisis, if there was an emergency that it would be possible to break that budget summit. However, to break that budget summit we need executive as well as congressional support. It is very clear at this stage that the executive branch of Government, the President and his spokespersons have made it very clear that they are not prepared to declare any national crisis at this time that calls for the breaking of the summit agreement. Therefore, what the gentleman from California is simply saying is that as we go to the conference that we ought to comply with the budget summit, hit the Gramm-Rudman-Hollings target and avoid sequestration, which I do not find objectionable at all.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS of California. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Kentucky [Mr. ROGERS], a member of the Committee on the Budget.

Mr. ROGERS. Mr. Speaker, I thank the gentleman from California for yielding me this time.

Mr. Speaker, I rise in support of the motion with a little bit of hesitancy because I would in fact even though along with a possible situation where if the White House, the Senate, and the House could agree that we would even break the caps to fight the war on drugs because there are new developments in fact in the war on drugs that I think warrant the attention of the Congress and the committee and the Nation in fact that allow us an even enhanced chance to destroy and do away with the tremendous crops being grown particularly in Latin America that the Attorney General has reported to us that he discovered and observed on his recent trip to Latin America.

The language of the motion I think is adequate. It gives the proper emphasis to singling out the war on drugs as an area that we should relook at as we go into conference, and notifies the members of the conference from the other body that we do share the heightened awareness of the problem of the war on drugs and the need, the desperate need in fact of additional funds for the Drug Enforcement Administration and the Federal Bureau of Investigation and the agencies of Justice and the Coast Guard and the other agencies of the Government involved in the fight.

□ 1430

Those agencies are woefully underfunded as they are, and under the new budget numbers will be even more cramped in their style, not only in the war on drugs but in the war on crime in general.

So I welcome this language and I commend the gentleman from California [Mr. THOMAS] for offering the language to instruct the conferees to emphasize the high priority of fighting the war on drugs without breaking the discretionary caps on spending and revenue. The budget summit, my colleagues will recollect, included language which said that the caps would be binding except in, as the language says, a dire emergency. If there is an emergency, even a dire emergency in this country, I think almost everyone would say that that emergency exists in the massive infusion of cocaine into this country particularly from Latin America.

As I said before, there are some opportunities for us as a nation in Latin America in the war on drugs that are opening up to us in the way of eradication that we simply cannot take advantage of with present funding levels. I welcome the language that the gentleman from California has offered to instruct the conferees on the emphasis on the war on drugs. I would even hope at some point in time that all of the parties involved would be able to agree to even break the caps for some additional funds for this particular purpose.

So I rise in strong support of the language. I would take it further even that the gentleman's language is satisfactory.

Mr. THOMAS of California. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Speaker, this is a very interesting motion because it directs us to some of the things about budgeting that have already made a difference around here in the last few months. We need to set some priorities, we need to set priorities within the budgeting structure, and I know that is what was intended when the summit took place. But to me the very essence of that requires us to say there are things like the drug war that need the kind of attention and additional resources that we simply do not get by everyday, routine consideration in the committees that we have around here.

But when it comes to the budgeting process, why do we not take that from somewhere else, reduce spending, make those tough choices? Why do we always get the solution that we see so often down here and we see from the other body in this case to add more money in at the beginning before we even consider exactly where we would spend it?

As the head of the Republican Task Force on Drugs, I have been looking, and our task force has been looking at all kinds of options that we might have in dealing with the war on drugs that we will not be using now. The gentleman from Kentucky [Mr. ROGERS] named a couple of areas we might be looking at. We certainly need to revisit some that do not need the expenditure of any money. This body in the past, when we considered the omnibus drug bill in the last Congress, passed a death penalty for major drug traffickers. Unfortunately, that did not make it into the final product. We need to look at that again. There is no reason why this Congress and this country should not have the death penalty in law and carry out the death penalty in the case of major drug traffickers. We need a heavy deterrent, and that requires no money. It simply requires the will of this body and the people to do so.

We also need to look at the demand side in the area of drug users. This body did pass, and it was adopted into law last time around, a Federal provision which actually makes it a crime for the initial use of drugs by anybody in America. But unfortunately, the teeth are not in that law, and the States who are right on the front line have not adopted similar laws and taken steps in order to enforce that kind of deterrent for drug use.

There are some needs that do require money though. We need more jails, we need more prosecutors, we need support for education and rehabilitation on the demand side of this equation, and we definitely need to assist the efforts at interdiction and eradication programs that are being conducted by some of our friends who are attempting to do this abroad, and our Drug Enforcement Administration.

It is best to get this without going through the process though of breaking anybody's budget summit, and I am going to support the effort today in this motion. But like the gentleman from Kentucky [Mr. ROGERS] I certainly reserve the right to come back here at some point in the future, and I am sure all of the Members feel this way, and I know the gentleman from Pennsylvania [Mr. GRAY] does, and seek additional resources if it turns out after we look at these alternatives that indeed the summit should be broken in some fashion. But not today, not under the circumstances of the consideration of the budget conference.

I urge my colleagues to vote for this motion, and I thank the gentleman for yielding me this time.

Mr. THOMAS of California. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, I would like to compliment the gentleman from California [Mr. THOMAS] and the gentleman from Pennsylvania [Mr. GRAY]. The gentleman from Pennsylvania [Mr. GRAY] said this is going to be making a strong statement. It does make a strong statement, but it does not make a strong enough statement.

I want to ask all of my colleagues now if they would just reflect for a moment. We have constantly in this Chamber and in committees around Capitol Hill talked about drug containment. We do not hear what witnesses talking about an agenda, about what it is that is going to solve the problem.

Mr. Speaker, we are going to be here in the year 1998 talking about the same problem and again talking about spending more money on this problem. The problem is that we do not in this country have a blueprint for absolute victory, a blueprint that will say by the year 1995 we can be a drug-free society here in the United States.

Why is that? It is because this administration, previous administrations, this Congress, the Senate, everybody follows a policy of drug containment. This will not work. In order to win the war against drugs we have to adopt news, tighter measures. We have to get serious about the violation of the law and punish the drug user. A lot of us are not very comfortable with that, but this has to be done. We have to again, as my colleague from Florida, Mr. MCCOLLUM, mentioned, address the question of the death penalty in the most severe circumstances. We are not talking about putting to death a guy who is peddling the stuff on the street. We are talking about the kingpin, the one who may very well be down holed up in Colombia or some other country around this world pulling the strings and killing our youth. We have to talk about that. We have to talk about the death penalty for those who would kill our DEA agents, our drugs agents around the globe. We have to talk about that.

We have to again pass a posse comitatus provision which will get our Armed Forces more involved. We have to pass the necessary legislation to allow our military to be involved in other countries around the globe where they are needed to assist the local police and local military in wiping out this drug threat.

Right now we know that Colombia is an absolute basket case. With all of the desire that they could possibly muster, they cannot take control of their own country because they are so overrun with this cancerous growth.

Mr. Speaker, what I am saying is tomorrow I am going to be filing the toughest drug package that has ever been filed here in the Congress of the United States. I am asking my colleagues to look at this bill, examine it, and see if this does not involve new and more innovative ways of using our present assets to get after the drug problem in this country and to win in this regard.

Mr. GEKAS. Mr. Speaker, will the gentleman yield?

Mr. SHAW. I am glad to yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Speaker, I thank the gentleman for seconding the thesis that was propounded by his colleague from Florida, Mr. MCCOLLUM, and I want to join with the gentleman to help push through the new product he is going to be producing tomorrow here on the floor.

In the meantime, I want to add some horror stories to what the gentleman has already told about what this drug kingpin is able to do. He has been able in the past to execute a judge, to kill a judge who was about to pass sentence on a drug smuggler in Texas. The drug kingpin, the drug czar ordered successfully the execution of that judge.

More recently in New York a police officer who was guarding the home of a witness who was going to testify in a major drug case was himself executed in cold blood at the direction of a drug kingpin who himself was in prison.

So the gentleman's comments are well taken on the necessity for the imposition of the death penalty for these stop-at-nothing killers.

Mr. SHAW. Reclaiming my time, I would say to the gentleman from Pennsylvania, who I assume will be an original cosponsor of this bill I am going to file tomorrow, that the language of his death penalty that he has been supporting in committee and here trying to get the language to the floor, is contained almost exactly in the bill that we are going to be filing.

What I am saying, Mr. Speaker, is that we must join together as Democrats and Republicans and say that the war on drugs is going to be a real war. We are talking about waging world war III. We have to do it together, we have to do it with our military, we have to do it with the full assets and the full reserve of the Federal Government behind us. Without it, we are simply fighting a war of containment.

Again I want to compliment the gentleman from California [Mr. THOMAS] and the gentleman from Pennsylvania [Mr. GRAY] and thank them for this language. It is certainly a meaningful step, but there is much more to be done. I would hope that we could join together and push a real powerful drug bill that is going to send out all of the right messages.

Mr. THOMAS of California. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in favor of his motion that would aim our efforts toward the drug effort in this country, but do so within the budget summit agreement.

Let me say I start with the premise that the drug fight is probably one of the most important priorities that we face as a nation. The question is, Can we do it within the amounts of money that are allocated to the Federal Government under the budget summit agreement? I suggest we can.

I suggest the President has recently sent to this Congress a rescission package for $1.5 billion that is pure pork that was passed in the continuing resolution last year, and that those items of pork could in fact be reduced in order to have this priority of fighting drugs addressed.

Let me cite to my colleagues some of the things we might be able to reduce spending on in order to fight an all-out war on drugs. For example, the continuing resolution had in it $10 million for the USDA to purchase surplus sunflower oil. Let me suggest that might be very important to a few people, but $10 million for sunflower oil is not as important a priority as fighting drugs.

That particular bill had $2.6 million earmarked for the development of domestic and international markets for U.S. fishery products. Again, some people may say that is important. The question is whether or not it is more important than fighting drugs in this country.

That particular bill had $43.2 million in it for outlays for 15 Department of Energy construction projects, 12 of which were new starts that had never been submitted by DOE, nor had they ever been submitted to a peer review process. In other words, they are projects that were pure pork added on in the Congress. Once again, people may say those are very important. Are they more important than fighting drugs? I would suggest not.

There was $17.1 million in outlays earmarked for 14 highway demonstration projects. Again, highway demonstration projects are very important, but are they more important than fighting drugs? No.

There was $500,000 authorized to bring foreign politicians to the United States to sit in our gallery and watch Congress at work. I would suggest that that $500,000 might better be spent fighting drugs than having foreign politicians in the gallery.

There was $500,000 for the Seattle Goodwill Games Organizing Committee, a nice project if we had all of the money in the world, but it is far more important to fight drugs than to give money to a televised event.

There was $6.4 million to finance a gondola transportation system somewhere out in Idaho for a ski system out there to attract tourists, $6.4 million. I am sure that area in Idaho would love to have it, but $6.4 million

could better be spent fighting drugs in this country.

What I am suggesting is the gentleman from California [Mr. THOMAS] has a very reasonable resolution before us. What he is saying is let us fight drugs, let us put that as a concentration, as what we want to do as a Federal Government, but let us find the money within the Federal budget to do so. By citing a list like this, I am only saying there is plenty of room within the Federal budget to find the money we need in order to conduct an all-out war on drugs.

□ 1445

Mr. THOMAS of California. Mr. Speaker, I yield 3 minutes, for purposes of debate only, to the gentleman from Georgia [Mr. SWINDALL].

Mr. SWINDALL. I thank the gentleman from yielding.

Mr. Speaker, I rise today to speak strongly, in favor of the gentleman's resolution.

On Monday evening I stood in a neighborhood in my own district where the parents of young kids had asked me to come and talk about this very issue—the issue of drugs destroying our children, our families, our neighborhoods and, yes, our very Nation. They were talking about it out of concern and out of despair. They said their neighborhood had been taken over by drug dealers. They said it is now a common occurrence to see drug deals being conducted on street corners and they simply do not know what to do. So they called on their Congressmen, not so much expecting a solution but simply to vent their frustrations.

The very next day I went to the White House to participate in a memorial service for the Drug Enforcement Agency officers and other law enforcement officers who have lost their lives in the line of duty. I mention those two events because when it comes to dealing with the budget it is important to remember that whether you are dealing with a constitutional amendment to require a balanced budget or the Gramm-Rudman-Hollings proposal, all of those have common language that says all the rules of budgeting go out the window in the event you have one of two occurrences: One is a war, the other is a national emergency.

I would suggest that the facts dictate that we are now engaged in both, a national emergency and a war, because truly there are victims to the war that is now ongoing.

Last week in Atlanta a kindergarten-aged child lost, possibly, his right to ever walk again because he was shot down on the streets of a housing project in Atlanta, GA, by drug underworld figures.

According to newspaper reports, he was on his way to a neighbor's home to get a "Freezie."

I am a father of a 3½-year-old and a 1½-year-old and nothing concerns me greater than the battle that is going on right now. The problem is the enemy has limitless resources. It is time for us to prioritize our budgeting in such a way that we begin to at least match our rhetoric with the reality of the national emergency and war that presently exist.

Mr. GILMAN. Mr. Speaker, I wish to express my support for the motion to instruct the conferees on House Concurrent Resolution 268, offered by my good friend, the gentleman from California [Mr. THOMAS]. We must find a way to provide the desperately needed resources to fight the war on drugs while staying within the discretionary spending limits and sticking to the budget summit agreement with the White House.

One of the most important responsibilities as Members of Congress is to choose between competing needs. I can think of no greater need than fighting drugs. The production, trafficking and consumption of illicit narcotics is threatening our neighborhoods just as severely as it is threatening Latin American governments. There have already been too many American casualties in the war against drugs.

Accordingly, I urge my colleagues to support this prudent motion. We must work together, in this time of fiscal restraint, to effectively combat the danger of illegal drugs.

Mr. THOMAS of California. Mr. Speaker, I would urge my colleagues to support this motion. A budget is simply a listing of our priorities. Let us tell our conferees to negotiate a high continuing priority for the war on drugs but to do so within the strictures of the summit agreement.

Mr. Speaker, I yield back the balance of my time.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. HUGHES] who has been intimately involved in this whole effort with regard to drugs.

Mr. HUGHES. I thank the gentleman for yielding.

Mr. Speaker, I will try not to take all the time. I know you want to get on with the business at hand.

Mr. Speaker, I do support the motion to instruct conferees. I congratulate my colleagues on offering the motion.

Let me just say we declared war on drugs 2 years ago; and 5 months after that we declared the war on drugs in this country than we gutted much of what we did 5 months earlier by reducing State and local assistance programs, cutting programs such as the Coast Guard.

The Coast Guard now is operating at about 55-percent capacity in their interdiction because we, we, this House and the other body cut the Coast Guard budget by about $105 million. They are still about $60 million short even with this reprogramming. And it is the Coast Guard that is our first line of defense on the high seas in trying to interdict traffickers in this country.

So I say to my colleagues I think it is important that we instruct conferees but it is also important that we remember as we vote upon these issues for our Justice Department and their appropriations, and we vote on our budgets, that we allow sufficient money to fund our law enforcement agencies, to fund education and other demand-reduction programs and we have not done that.

So while it is an election year again and once again everybody is going to jump on the bandwagon and be against drugs, I just say to my colleagues we need to have some degree of consistency.

The roller coaster type of funding that we have seen in this whole drug area is just inexcusable. Unfortunately it has been this body and the other body which have caused much of that problem.

You know, it is easy to jump on the administration and blame the administration for the fact that we do not have resources. But unfortunately we have been less than a good partner with those at the local level, State and local police officials, in trying to derive and develop strategies and resources that would do something about what I consider to be the Nation's No. 1 problem, substance abuse.

Once again I thank the gentleman.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield back the balance of my time.

Mr. THOMAS of California. Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion to instruct offered by the gentleman from California [Mr. THOMAS].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. THOMAS of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 412, nays 0, not voting 19, as follows:

[Roll No. 59]

YEAS—412

Ackerman	Aspin	Beilenson
Akaka	Atkins	Bennett
Alexander	AuCoin	Bereuter
Anderson	Badham	Berman
Andrews	Baker	Bevill
Annunzio	Ballenger	Bilbray
Anthony	Barnard	Bilirakis
Applegate	Bartlett	Bliley
Archer	Barton	Boehlert
Armey	Bateman	Boggs

Bonior	Frost	Lowery (CA)	Sabo	Smith, Robert (NH)	Traficant
Bonker	Gallegly	Lowry (WA)	Saiki		Traxler
Borski	Gallo	Lujan	Savage	Smith, Robert (OR)	Udall
Bosco	Garcia	Luken, Thomas	Sawyer		Upton
Boucher	Gaydos	Lukens, Donald	Saxton	Snowe	Valentine
Boulter	Gejdenson	Lungren	Schaefer	Solarz	Vander Jagt
Boxer	Gekas	MacKay	Scheuer	Solomon	Vento
Brennan	Gephardt	Madigan	Schneider	Spence	Visclosky
Brooks	Gibbons	Manton	Schroeder	Spratt	Volkmer
Broomfield	Gilman	Markey	Schuette	St Germain	Vucanovich
Brown (CA)	Gingrich	Marlenee	Schulze	Staggers	Walgren
Brown (CO)	Glickman	Martin (IL)	Schumer	Stallings	Walker
Bruce	Gonzalez	Martin (NY)	Sensenbrenner	Stangeland	Watkins
Bryant	Goodling	Martinez	Sharp	Stark	Waxman
Buechner	Gordon	Matsui	Shaw	Stenholm	Weber
Bunning	Gradison	Mavroules	Shays	Stokes	Weiss
Burton	Grandy	Mazzoli	Shumway	Stratton	Weldon
Bustamante	Grant	McCandless	Shuster	Studds	Wheat
Byron	Gray (IL)	McCloskey	Sikorski	Stump	Whittaker
Callahan	Gray (PA)	McCollum	Sisisky	Sundquist	Whitten
Campbell	Green	McCurdy	Skaggs	Sweeney	Williams
Cardin	Gregg	McDade	Skeen	Swift	Wise
Carper	Guarini	McEwen	Skelton	Swindall	Wolf
Carr	Gunderson	McHugh	Slattery	Synar	Wolpe
Chandler	Hall (OH)	McMillan (NC)	Slaughter (NY)	Tallon	Wortley
Chapman	Hall (TX)	McMillen (MD)	Slaughter (VA)	Tauke	Wyden
Chappell	Hamilton	Meyers	Smith (FL)	Tauzin	Wylie
Cheney	Hammerschmidt	Mfume	Smith (IA)	Taylor	Yates
Clarke	Hansen	Mica	Smith (NE)	Thomas (CA)	Yatron
Clement	Harris	Michel	Smith (NJ)	Thomas (GA)	Young (AK)
Clinger	Hastert	Miller (CA)	Smith (TX)	Torres	Young (FL)
Coats	Hatcher	Miller (OH)	Smith, Denny (OR)	Torricelli	
Coble	Hawkins	Miller (WA)		Towns	
Coelho	Hayes (IL)	Mineta			
Coleman (MO)	Hayes (LA)	Moakley			
Coleman (TX)	Hefley	Mollohan			
Collins	Hefner	Montgomery			
Combest	Henry	Moorhead			
Conte	Herger	Morella			
Conyers	Hertel	Morrison (CT)			
Cooper	Hiler	Morrison (WA)			
Coughlin	Hochbrueckner	Mrazek			
Courter	Holloway	Murphy			
Coyne	Hopkins	Murtha			
Craig	Horton	Myers			
Crane	Houghton	Nagle			
Crockett	Hoyer	Natcher			
Dannemeyer	Hubbard	Neal			
Darden	Huckaby	Nelson			
Daub	Hughes	Nichols			
Davis (IL)	Hunter	Nielson			
de la Garza	Hutto	Nowak			
DeFazio	Hyde	Oakar			
DeLay	Inhofe	Oberstar			
Dellums	Ireland	Obey			
Derrick	Jacobs	Olin			
DeWine	Jeffords	Ortiz			
Dickinson	Jenkins	Owens (NY)			
Dicks	Johnson (CT)	Owens (UT)			
Dingell	Johnson (SD)	Oxley			
DioGuardi	Jones (NC)	Packard			
Dixon	Jones (TN)	Panetta			
Donnelly	Jontz	Pashayan			
Dorgan (ND)	Kanjorski	Patterson			
Dornan (CA)	Kaptur	Pease			
Dowdy	Kasich	Pelosi			
Downey	Kastenmeier	Penny			
Dreier	Kennedy	Pepper			
Duncan	Kennelly	Perkins			
Durbin	Kildee	Petri			
Dwyer	Kleczka	Pickett			
Dymally	Kolbe	Pickle			
Dyson	Kolter	Porter			
Early	Konnyu	Price (NC)			
Eckart	Kostmayer	Pursell			
Edwards (CA)	Kyl	Quillen			
Edwards (OK)	LaFalce	Rahall			
English	Lagomarsino	Rangel			
Erdreich	Lancaster	Ravenel			
Espy	Lantos	Regula			
Evans	Latta	Rhodes			
Fascell	Leach (IA)	Richardson			
Fawell	Leath (TX)	Ridge			
Fazio	Lehman (CA)	Rinaldo			
Feighan	Lehman (FL)	Ritter			
Fields	Leland	Rodino			
Fish	Levin (MI)	Roe			
Flake	Levine (CA)	Rogers			
Flippo	Lewis (CA)	Rose			
Florio	Lewis (FL)	Rostenkowski			
Foglietta	Lewis (GA)	Roth			
Foley	Lightfoot	Roukema			
Ford (MI)	Lipinski	Rowland (CT)			
Ford (TN)	Livingston	Rowland (GA)			
Frank	Lloyd	Roybal			
Frenzel	Lott	Russo			

NOT VOTING—19

Bates	Kemp	Price (IL)
Bentley	Lent	Ray
Biaggi	Mack	Roberts
Boland	McGrath	Robinson
Clay	Molinari	Wilson
Davis (MI)	Moody	
Emerson	Parris	

□ 1513

Mr. TAUKE changed his vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid upon the table.

The SPEAKER pro tempore. The Chair will withhold appointing conferees until the return of the Speaker.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mrs. Emery, one of his secretaries.

CONFERENCE REPORT ON H.R. 3, OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Mr. ROSTENKOWSKI submitted the following conference report and statement on the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes:

CONFERENCE REPORT (H. REPT. 100-576)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—TRADE, CUSTOMS, AND TARIFF LAWS

SEC. 1001. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) in the last 10 years there has arisen a new global economy in which trade, technological development, investment, and services form an integrated system; and in this system these activities affect each other and the health of the United States economy;

(2) the United States is confronted with a fundamental disequilibrium in its trade and current account balances and a rapid increase in its net external debt;

(3) such disequilibrium and increase are a result of numerous factors, including—

(A) disparities between the macroeconomic policies of the major trading nations,

(B) the large United States budget deficit,

(C) instabilities and structural defects in the world monetary system,

(D) the growth of debt throughout the developing world,

(E) structural defects in the world trading system and inadequate enforcement of trade agreement obligations,

(F) governmental distortions and barriers,

(G) serious shortcomings in United States trade policy, and

(H) inadequate growth in the productivity and competitiveness of United States firms and industries relative to their overseas competition;

(4) it is essential, and should be the highest priority of the United States Government, to pursue a broad array of domestic and international policies—

(A) to prevent future declines in the United States economy and standards of living,

(B) to ensure future stability in external trade of the United States, and

(C) to guarantee the continued vitality of the technological, industrial, and agricultural base of the United States;

(5) the President should be authorized and encouraged to negotiate trade agreements and related investment, financial, intellectual property, and services agreements that meet the standards set forth in this title; and

(6) while the United States is not in a position to dictate economic policy to the rest of the world, the United States is in a position to lead the world and it is in the national interest for the United States to do so.

(b) PURPOSES.—The purposes of this title are to—

(1) authorize the negotiation of reciprocal trade agreements;

(2) strengthen United States trade laws;

(3) improve the development and management of United States trade strategy; and

(4) through these actions, improve standards of living in the world.

Subtitle A—United States Trade Agreements

PART 1—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

SEC. 1101. OVERALL AND PRINCIPAL TRADE NEGOTIATING OBJECTIVES OF THE UNITED STATES.

(a) OVERALL TRADE NEGOTIATING OBJECTIVES.—The overall trade negotiating objectives of the United States are to obtain—

(1) more open, equitable, and reciprocal market access;

(2) the reduction or elimination of barriers and other trade-distorting policies and practices; and

(3) a more effective system of international trading disciplines and procedures.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

(1) DISPUTE SETTLEMENT.—The principal negotiating objectives of the United States with respect to dispute settlement are—

(A) to provide for more effective and expeditious dispute settlement mechanisms and procedures; and

(B) to ensure that such mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights.

(2) IMPROVEMENT OF THE GATT AND MULTILATERAL TRADE NEGOTIATION AGREEMENTS.—The principal negotiating objectives of the United States regarding the improvement of GATT and multilateral trade negotiation agreements are—

(A) to enhance the status of the GATT;

(B) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and

(C) to expand country participation in particular agreements or arrangements, where appropriate.

(3) TRANSPARENCY.—The principal negotiating objective of the United States regarding transparency is to obtain broader application of the principle of transparency and clarification of the costs and benefits of trade policy actions through the observance of open and equitable procedures in trade matters by Contracting Parties to the GATT.

(4) DEVELOPING COUNTRIES.—The principal negotiating objectives of the United States regarding developing countries are—

(A) to ensure that developing countries promote economic development by assuming the fullest possible measure of responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices; and

(B) to establish procedures for reducing nonreciprocal trade benefits for the more advanced developing countries.

(5) CURRENT ACCOUNT SURPLUSES.—The principal negotiating objective of the United States regarding current account surpluses is to develop rules to address large and persistent global current account imbalances of countries, including imbalances which threaten the stability of the international trading system, by imposing greater responsibility on such countries to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation of trade agreements where feasible and appropriate.

(6) TRADE AND MONETARY COORDINATION.—The principal negotiating objective of the United States regarding trade and monetary coordination is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

(7) AGRICULTURE.—The principal negotiating objectives of the United States with respect to agriculture are to achieve, on an expedited basis to the maximum extent feasible, more open and fair conditions of trade in agricultural commodities by—

(A) developing, strengthening, and clarifying rules for agricultural trade, including disciplines on restrictive or trade-distorting import and export practices;

(B) increasing United States agricultural exports by eliminating barriers to trade (including transparent and nontransparent barriers) and reducing or eliminating the subsidization of agricultural production consistent with the United States policy of agricultural stabilization in cyclical and unpredictable markets;

(C) creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access and eliminating and reducing substantially other specific constraints to fair trade and more open market access, such as tariffs, quotas, and other nontariff practices, including unjustified phytosanitary and sanitary restrictions; and

(D) seeking agreements by which the major agricultural exporting nations agree to pursue policies to reduce excessive produc-

tion of agricultural commodities during periods of oversupply, with due regard for the fact that the United States already undertakes such policies, and without recourse to arbitrary schemes to divide market shares among major exporting countries.

(8) UNFAIR TRADE PRACTICES.—The principal negotiating objectives of the United States with respect to unfair trade practices are—

(A) to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices;

(B) to obtain the application of similar rules to the treatment of primary and nonprimary products in the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (relating to subsidies and countervailing measures); and

(C) to obtain the enforcement of GATT rules against—

(i) state trading enterprises, and

(ii) the acts, practices, or policies of any foreign government which, as a practical matter, unreasonably require that—

(I) substantial direct investment in the foreign country be made,

(II) intellectual property be licensed to the foreign country or to any firm of the foreign country, or

(III) other collateral concessions be made,

as a condition for the importation of any product or service of the United States into the foreign country or as a condition for carrying on business in the foreign country.

(9) TRADE IN SERVICES.—

(A) The principal negotiating objectives of the United States regarding trade in services are—

(i) to reduce or to eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) are consistent with the commercial policies of the United States, and

(II) will reduce or eliminate such barriers or distortions, and help ensure fair, equitable opportunities for foreign markets.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(10) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding intellectual property are—

(A) to seek the enactment and effective enforcement by foreign countries of laws which—

(i) recognize and adequately protect intellectual property, including copyrights, patents, trademarks, semiconductor chip layout designs, and trade secrets, and

(ii) provide protection against unfair competition,

(B) to establish in the GATT obligations—

(i) to implement adequate substantive standards based on—

(I) the standards in existing international agreements that provide adequate protection, and

(II) the standards in national laws if international agreement standards are inadequate or do not exist,

(ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented under clause (i), and

(iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;

(C) to recognize that the inclusion in the GATT of—

(i) adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and

(ii) dispute settlement provisions and enforcement procedures,

is without prejudice to other complementary initiatives undertaken in other international organizations; and

(D) to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

(11) FOREIGN DIRECT INVESTMENT.—

(A) The principal negotiating objectives of the United States regarding foreign direct investment are—

(i) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) will help ensure a free flow of foreign direct investment, and

(II) will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(12) SAFEGUARDS.—The principal negotiating objectives of the United States regarding safeguards are—

(A) to improve and expand rules and procedures covering safeguard measures;

(B) to ensure that safeguard measures are—

(i) transparent,

(ii) temporary,

(iii) degressive, and

(iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and

(C) to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

(13) SPECIFIC BARRIERS.—The principal negotiating objective of the United States regarding specific barriers is to obtain competitive opportunities for United States exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports to United States markets, including the reduction or elimination of specific tariff and nontariff trade barriers, particularly—

(A) measures identified in the annual report prepared under section 181 of the Trade Act of 1974 (19 U.S.C. 2241); and

(B) foreign tariffs and nontariff barriers on competitive United States exports when like or similar products enter the United States at low rates of duty or are duty-free, and other tariff disparities that impede access to particular export markets.

(14) WORKER RIGHTS.—The principal negotiating objectives of the United States regarding worker rights are—

(A) to promote respect for worker rights;

(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

(15) ACCESS TO HIGH TECHNOLOGY.—

(A) The principal negotiating objective of the United States regarding access to high technology is to obtain the elimination or reduction of foreign barriers to, and acts, policies, or practices by foreign governments which limit, equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(i) restricting the participation of United States persons in government-supported research and development projects;

(ii) denying equitable access by United States persons to government-held patents;

(iii) requiring the approval or agreement of government entities, or imposing other forms of government interventions, as a condition for the granting of licenses to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology); and

(iv) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

(B) In pursuing the negotiating objective described in subparagraph (A), the United States negotiators shall take into account United States Government policies in licensing or otherwise making available to foreign persons technology and other information developed by United States laboratories.

(16) BORDER TAXES.—The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily for revenue on direct taxes rather than indirect taxes.

SEC. 1102. TRADE AGREEMENT NEGOTIATING AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, and objectives of this title will be promoted thereby, the President—

(A) before June 1, 1993, may enter into trade agreements with foreign countries; and

(B) may, subject to paragraphs (2) through (5), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties;

as he determines to be required or appropriate to carry out any such trade agreement.

(2) No proclamation may be made under subsection (a) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of enactment of this Act) to a rate which is less than 50 percent of the rate of such duty that applies on such date of enactment; or

(B) increases any rate of duty above the rate that applies on such date of enactment.

(3)(A) Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed in paragraph (1) to carry out such agreement with respect to such article.

(B) No staging under subparagraph (A) is required with respect to a rate reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) No reduction in a rate of duty under a trade agreement entered into under subsection (a) on any article may take effect more than 10 years after the effective date of the first reduction under paragraph (1) that is proclaimed to carry out the trade agreement with respect to such article.

(6) A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 1103 and that bill is enacted into law.

(b) AGREEMENTS REGARDING NONTARIFF BARRIERS.—

(1) Whenever the President determines that any barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

(B) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect;

and that the purposes, policies, and objectives of this title will be promoted thereby, the President may, before June 1, 1993, enter into a trade agreement with foreign countries providing for—

(i) the reduction or elimination of such barrier or other distortion; or

(ii) the prohibition of, or limitations on the imposition of, such barrier or other distortion.

(2) A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 1101.

(c) BILATERAL AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) Before June 1, 1993, the President may enter into bilateral trade agreements with foreign countries that provide for the elimination or reduction of any duty imposed by the United States. A trade agreement entered into under this paragraph may also provide for the reduction or elimination of barriers to, or other distortions of, the international trade of the foreign country or the United States.

(2) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country.

(3) A trade agreement may be entered into under paragraph (1) with any foreign country only if—

(A) the agreement makes progress in meeting the applicable objectives described in section 1101;

(B) such foreign country requests the negotiation of such an agreement; and

(C) the President, at least 60 days before the date notice is provided under section 1103(a)(1)(A)—

(i) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(ii) consults with such committees regarding the negotiation of such agreement.

(4) The 60-day period of time described in paragraph (3)(B) shall be computed in accordance with section 1103(f).

(5) In any case in which there is an inconsistency between any provision of this Act and any bilateral free trade area agreement that entered into force and effect with respect to the United States before January 1, 1987, the provision shall not apply with respect to the foreign country that is party to that agreement.

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) Before the President enters into any trade agreement under subsection (b) or (c), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(2) The consultation under paragraph (1) shall include—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, and objectives of this title; and

(C) all matters relating to the implementation of the agreement under section 1103.

(3) If it is proposed to implement two or more trade agreements in a single implementing bill under section 1103, the consultation under paragraph (1) shall include the desirability and feasibility of such proposed implementation.

SEC. 1103. IMPLEMENTATION OF TRADE AGREEMENTS.

(a) IN GENERAL.—

(1) Any agreement entered into under section 1102(b) or (c) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which he enters into the trade agreement, notifies the House of Representatives and the Senate of his intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President submits a document to the House of Representatives and to the Senate containing a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill,

(ii) a statement of any administrative action proposed to implement the trade agreement, and

(iii) the supporting information described in paragraph (2); and

(C) the implementing bill is enacted into law.

(2) The supporting information required under paragraph (1)(B)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives of this title,

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i), and why and to what extent the agreement does not achieve other applicable purposes, policies, and objectives,

(II) how the agreement serves the interests of United States commerce, and

(III) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement;

(iii) describing the efforts made by the President to obtain international exchange rate equilibrium and any effect the agreement may have regarding increased international monetary stability; and

(iv) describing the extent, if any, to which—

(I) each foreign country that is a party to the agreement maintains non-commercial state trading enterprises that may adversely affect, nullify, or impair the benefits to the United States under the agreement, and

(II) the agreement applies to or affects purchases and sales by such enterprises.

(3) To ensure that a foreign country which receives benefits under a trade agreement entered into under section 1102(b) or (c) is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(b) APPLICATION OF CONGRESSIONAL "FAST TRACK" PROCEDURES TO IMPLEMENTING BILLS.—

(1) Except as provided in subsection (c)—

(A) the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) (herein-

after in this section referred to as "fast track procedures") apply to implementing bills submitted with respect to trade agreements entered into under section 1102 (b) or (c) before June 1, 1991; and

(B) such fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under section 1102 (b) or (c) after May 31, 1991, and before June 1, 1993, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 1991.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 1102 (b) or (c) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

(A) its views regarding the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title; and

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(4) The reports submitted to the Congress under paragraphs (2) and (3), or any portion of the reports, may be classified to the extent the President determines appropriate.

(5)(A) For purposes of this subsection, the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the disapproves the request of the President for the extension, under section 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 1102 (b) or (c) of such Act after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be jointly referred, in the House of Representatives, to the Committee on Ways and Means and the Committee on Rules.

(C) The provisions of sections 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution that is reported to such House after May 15, 1991.

(c) LIMITATIONS ON USE OF "FAST TRACK" PROCEDURES.—

(1)(A) The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 1102(b) or (c) if both Houses of the Congress separately agree to procedural disapproval resolutions within any 60-day period.

(B) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules,

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules, and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(C) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to procedural disapproval resolutions.

(D) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules.

(E) For purposes of this subsection, the term "procedural disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 1102(b) or (c) of such Act of 1988, if, during the 60-day period beginning on the date on which this resolution is agreed to by the , the agrees to a procedural disapproval resolution (within the meaning of section 1103(c)(1)(E) of such Act of 1988).", with the first blank space being filled with the name of the resolving House of the Congress and the second blank space being filled with the name of the other House of the Congress.

(2) The fast track procedures shall not apply to any implementing bill that contains a provision approving of any trade agreement which is entered into under section 1102(c) with any foreign country if either—

(A) the requirements of section 1102(c)(3) are not met with respect to the negotiation of such agreement; or

(B) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproves of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under section 1102(c)(3)(C)(i) with respect to the negotiation of such agreement.

(d) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsections (b) and (c) are enacted by the Congress—

(1) 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, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

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

(e) COMPUTATION OF CERTAIN PERIODS OF TIME.—Each period of time described in subsection (c)(1)(A) and (E) and (2) of this section shall be computed without regard to—

(1) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House of the Congress is not in session.

SEC. 1104. COMPENSATION AUTHORITY.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133) is amended—

(1) by amending subsection (a) to read as follows:

"(a) Whenever—

"(1) any action taken under chapter 1 of title II or chapter 1 of title III; or

"(2) any judicial or administrative tariff reclassification that becomes final after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988;

increases or imposes any duty or other import restriction, the President—

"(A) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

"(B) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.";

(2) by amending subsection (b)(2) by—

(A) striking out "section 109" and inserting "section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988", and

(B) striking out "section 101" each place it appears and inserting "such section 1102(a)";

(3) by striking out "section 101" in subsection (d) and inserting "section 1102 of the Omnibus Trade and Competitiveness Act of 1988"; and

(4) by adding at the end thereof the following new subsection:

"(e) The provisions of this section shall apply by reason of action taken under chapter 1 of title III only if the President determines that action authorized under this section is necessary or appropriate to meet the

international obligations of the United States.".

SEC. 1105. TERMINATION AND RESERVATION AUTHORITY; RECIPROCAL NONDISCRIMINATORY TREATMENT.

(a) IN GENERAL.—For purposes of applying sections 125, 126(a), and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

(1) any trade agreement entered into under section 1102 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 1102 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.

(b) RECIPROCAL NONDISCRIMINATORY TREATMENT.—

(1) The President shall determine, before June 1, 1993, whether any major industrial country has failed to make concessions under trade agreements entered into under section 1102 (a) and (b) which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under section 1102 (a) and (b), for the commerce of such country in the United States.

(2) If the President determines under paragraph (1) that a major industrial country has not made concessions under trade agreements entered into under section 1102 (a) and (b) which provide substantially equivalent competitive opportunities for the commerce of the United States, the President shall, either generally with respect to such country or by article produced by such country, in order to restore equivalence of competitive opportunities, recommend to the Congress—

(A) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under section 1102 (a) and (b) that have been made with respect to rates of duty or other import restrictions imposed by the United States, and

(B) legislation providing that any law necessary to carry out any trade agreement under section 1102 (a) or (b) not apply to such country.

(3) For purposes of this subsection, the term "major industrial country" means Canada, the European Communities, the individual member countries of the European Communities, Japan, and any other foreign country designated by the President for purposes of this subsection.

SEC. 1106. ACCESSION OF STATE TRADING REGIMES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE.

(a) IN GENERAL.—Before any major foreign country accedes, after the date of enactment of this Act, to the GATT the President shall determine—

(1) whether state trading enterprises account for a significant share of—

(A) the exports of such major foreign country, or

(B) the goods of such major foreign country that are subject to competition from goods imported into such foreign country; and

(2) whether such state trading enterprises—

(A) unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or

(B) are likely to result in such a burden, restriction, or effect.

(b) EFFECTS OF AFFIRMATIVE DETERMINATION.—If both of the determinations made under paragraphs (1) and (2) of subsection (a) with respect to a major foreign country are affirmative—

(1) the President shall reserve the right of the United States to withhold extension of the application of the GATT, between the United States and such major foreign country, and

(2) the GATT shall not apply between the United States and such major foreign country until—

(A) such foreign country enters into an agreement with the United States providing that the state trading enterprises of such foreign country—

(i) will—

(I) make purchases which are not for the use of such foreign country, and

(II) make sales in international trade,

in accordance with commercial considerations (including price, quality, availability, marketability, and transportation), and

(ii) will afford United States business firms adequate opportunity, in accordance with customary practice, to compete for participation in such purchases or sales; or

(B) a bill submitted under subsection (c) which approves of the extension of the application of the GATT between the United States and such major foreign country is enacted into law.

(c) EXPEDITED CONSIDERATION OF BILL TO APPROVE EXTENSION.—

(1) The President may submit to the Congress any draft of a bill which approves of the extension of the application of the GATT between the United States and a major foreign country.

(2) Any draft of a bill described in paragraph (1) that is submitted by the President to the Congress shall—

(A) be introduced by the majority leader of each House of the Congress (by request) on the first day on which such House is in session after the date such draft is submitted to the Congress; and

(B) shall be treated as an implementing bill for purposes of subsections (d), (e), (f), and (g) of section 151 of the Trade Act of 1974.

(d) PUBLICATION.—The President shall publish in the Federal Register each determination made under subsection (a).

SEC. 1107. DEFINITIONS AND CONFORMING AMENDMENTS.

(a) DEFINITIONS.—For purposes of this part:

(1) The term "distortion" includes, but is not limited to, a subsidy.

(2) The term "foreign country" includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(3) The term "GATT" means the General Agreement on Tariffs and Trade.

(4) The term "implementing bill" has the meaning given such term in section 151(b)(1) of the Trade Act of 1974 (19 U.S.C. 2191(b)(1)).

(5) The term "international trade" includes, but is not limited to—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(6) The term "state trading enterprise" means—

(A) any agency, instrumentality, or administrative unit of a foreign country which—

(i) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or

(ii) sells goods or services in international trade; or

(B) any business firm which—

(i) is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit thereof,

(ii) is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and

(iii) purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.

(b) CONFORMING AMENDMENTS.—

(1) Section 151(b)(1) of the Trade Act of 1974 (19 U.S.C. 2191(b)(1)) is amended by striking out "section 102" and inserting "section 102 of this Act or section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988".

(2) Section 121 of the Trade Act of 1974 (19 U.S.C. 2131) is amended by striking out subsections (a), (b), and (c).

PART 2—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

SEC. 1111. HEARINGS AND ADVICE.

(a) ADVICE FROM ITC AND OTHER FEDERAL AGENCIES CONCERNING TRADE POLICY AND NEGOTIATIONS.—Sections 131 through 134, inclusive, of the Trade Act of 1974 (19 U.S.C. 2151–2154) are amended to read as follows:

"SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.

"(a) LISTS OF ARTICLES WHICH MAY BE CONSIDERED FOR ACTION.—

"(1) In connection with any proposed trade agreement under section 123 of this Act or section 1102(a) or (c) of the Omnibus Trade and Competitiveness Act of 1988, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the 'Commission') with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

"(2) In connection with any proposed trade agreement under section 1102(b) or (c) of the Omnibus Trade and Competitiveness Act of 1988, the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

"(b) ADVICE TO PRESIDENT BY COMMISSION.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and

on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in section 1102(a)(3)(A).

"(c) ADDITIONAL INVESTIGATIONS AND REPORTS REQUESTED BY THE PRESIDENT OR THE TRADE REPRESENTATIVE.—In addition, in order to assist the President in his determination whether to enter into any agreement under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

"(d) COMMISSION STEPS IN PREPARING ITS ADVICE TO THE PRESIDENT.—In preparing its advice to the President under this section, the Commission shall to the extent practicable—

"(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles or services in question and the domestic industries producing the like or directly competitive articles or services;

"(2) analyze the production, trade, and consumption of each like or directly competitive article or service, 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;

"(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

"(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

"(e) PUBLIC HEARING.—In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

"SEC. 132. ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.

"Before any trade agreement is entered into under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 141(c).

"SEC. 133. PUBLIC HEARINGS.

"(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

"(b) SUMMARY OF HEARINGS.—The organization holding such hearing shall furnish the President with a summary thereof.

"SEC. 134. PREREQUISITES FOR OFFERS.

"(a) In any negotiation seeking an agreement under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

"(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

"(1) the Commission;

"(2) any advisory committee established under section 135; or

"(3) any organization that holds public hearings under section 133;

with respect to any article, or domestic industry, that is sensitive, or potentially sensitive, to imports.

PART 3—OTHER TRADE AGREEMENT AND NEGOTIATION PROVISIONS

SEC. 1121. IMPLEMENTATION OF NAIROBI PROTOCOL.

(a) PURPOSE AND REFERENCE.—

(1) The purpose of this section is—

(A) to provide for the implementation by the United States of the Protocol (S. Treaty Doc. 97-2, 9; hereafter referred to in this section as the "Nairobi Protocol") to the Agreement on the Importation of Educational, Scientific, and Cultural Materials (17 UST (pt. 2) 1835; commonly known as the "Florence Agreement");

(B) to clarify or modify the duty-free treatment accorded under the Educational, Scientific, and Cultural Materials Importation Act of 1982 (Public Law 97-446, 96 Stat. 2346-2349), the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-65, 80 Stat. 897 et seq.), and Public Law 89-634 (80 Stat. 879); and

(C) to continue the safeguard provisions concerning certain imported articles provided for in the Educational, Scientific, and Cultural Materials Importation Act of 1982.

(2) Whenever an amendment or repeal in this section is expressed in terms of an amendment to, or repeal of, an item, headnote, Appendix, or other provision, the reference shall be considered to be made to an item, headnote, Appendix, or other provision of the Tariff Schedules of the United States.

(b) REPEAL OF THE EDUCATIONAL, SCIENTIFIC, AND CULTURAL MATERIALS IMPORTATION ACT OF 1982.—The Educational, Scientific, and Cultural Materials Importation Act of 1982 is hereby repealed.

(c) TREATMENT OF PRINTED MATTER AND CERTAIN OTHER ARTICLES.—

(1) Items 270.45 and 270.50 are redesignated as items 270.46 and 270.48, respectively.

(2) Part 5 of schedule 2 is amended—

(A) by inserting in numerical sequence the following new item:

"	270.90	Catalogs of films, recordings, or other visual and auditory material of an educational, scientific, or cultural character.....	Free			Free	",

and

(B) by striking out items 273.45, 273.50, and 273.55 and the superior heading thereto and inserting in lieu thereof the following new item having the same degree of indentation as item 273.35:

"	273.52	Architectural, engineering, industrial, or commercial drawings and plans, whether originals or reproductions	Free			Free	".

(3)(A) The superior heading to items 274.50, 274.60, 274.65, and 274.70 is amended by inserting "(including developed photographic film; photographic slides; transparencies; holograms for laser projection; and microfilm, microfiches and similar articles except those provided for in item 737.52)" after "Photographs".

(B) Part 5 of schedule 2 is amended by inserting in numerical sequence the following new items under the superior heading "Printed not over 20 years at time of importation:", and before, and with the same degree of indentation as, "Lithographs on paper":

"	274.55	Loose illustrations, reproduction proofs or reproduction films used for the production of books	Free			Free	
	274.56	Articles provided for in items 270.05, 270.10, 270.25, 270.55, 270.63, 270.70, and 273.60 in the form of microfilm, microfiches, and similar film media	Free			Free	".

(C) Subpart D of part 5 of schedule 7 is amended by striking out item 735.20 and inserting in lieu thereof the following new items with a superior heading having the same degree of indentation as item 735.18:

"		Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for:					
	735.21	Crossword puzzle books, whether or not in the form of microfilm, microfiches, or similar film media	Free			Free	
	735.24	Other	5.52% ad val.			40% ad val.	".

(D) Item 737.52 is amended by inserting "(whether or not in the form of microfilm, microfiches, or similar film media)" after "Toy books".

(E) Item 830.00 is amended by inserting "; official government publications in the form of microfilm, microfiches, or similar film media" after "not developed".

(F) Item 840.00 is amended by inserting ", whether or not in the form of microfilm, microfiches, or similar film media" after "documents".

(d) VISUAL AND AUDITORY MATERIAL.—

(1) Headnote 1 to part 7 of schedule 8 is amended to read as follows:

"1. (a) No article shall be exempted from duty under item 870.30 unless either—

"(i) a Federal agency (or agencies) designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character (17 UST (pt. 2) 1578; Beirut Agreement), or

"(ii) such article—

"(A) is imported by, or certified by the importer to be for the use of, any public or private institution or association approved as educational, scientific, or cultural by a Federal agency or agencies designated by the President for the purpose of duty-free admission pursuant to the Nairobi Protocol to the Florence Agreement, and

"(B) is certified by the importer to be visual or auditory material of an educational, scientific, or cultural character or to have been produced by the United Nations or any of its specialized agencies.

For purposes of subparagraph (i), whenever the President determines that there is, or may be, profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry under that item of such foreign articles to insure that they will be exhibited or used only for nonprofitmaking purposes.

"(b) For purposes of items 870.32 through 870.35, inclusive, no article shall be exempted from duty unless it meets the criteria set forth in subparagraphs (a)(ii) (A) and (B) of this headnote.".

(2) Item 870.30 is amended—

(A) by inserting "(except toy models)" after "models", and

(B) by striking out "headnote 1" and inserting in lieu thereof "headnote 1(a)".

(3) Part 7 of schedule 8 is amended by inserting in numerical sequence the following new items with a superior heading at the same degree of indentation as item 870.30:

"		Articles determined to be visual or auditory materials in accordance with headnote 1 of this part:					
	870.32	Holograms for laser projection; microfilm, microfiches, and similar articles	Free			Free	
	870.33	Motion-picture films in any form on which pictures, or sound and pictures, have been recorded, whether or not developed	Free			Free	
	870.34	Sound recordings, combination sound and visual recordings, and magnetic recordings; video discs, video tapes, and similar articles	Free			Free	
	870.35	Patterns and wall charts; globes; mock-ups or visualizations of abstract concepts such as molecular structures or mathematical formulae; materials for programmed instruction; and kits containing printed materials and audio materials and visual materials or any combination of two or more of the foregoing	Free			Free	".

(e) TOOLS FOR SCIENTIFIC INSTRUMENTS OR APPARATUS.—Part 4 of schedule 8 is amended by inserting in numerical sequence the following new item having the same degree of indentation as item 852.20:

"	851.67	Tools specially designed to be used for the maintenance, checking, gauging or repair of scientific instruments or apparatus admitted under item 851.60	Free			Free	".

(f) ARTICLES FOR THE BLIND AND FOR OTHER HANDICAPPED PERSONS.—

(1) Subpart D of part 2 of schedule 8 is amended by striking out items 825.00, 826.10, and 826.20.

(2) The headnotes to part 7 of schedule 8 are amended—

(A) by adding at the end thereof the following new headnote:

"4. (a) For purposes of items 870.65, 870.66, and 870.67, the term 'blind or other physically or mentally handicapped persons' includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"(b) Items 870.65, 870.66, and 870.67 do not cover—

"(i) articles for acute or transient disability;

"(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;

"(iii) therapeutic and diagnostic articles; or

"(iv) medicine or drugs.".

(3) Part 7 of schedule 8 is amended by inserting in numerical sequence the following new items with a superior heading having the same degree of indentation as item 870.45:

"		Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons:				
		Articles for the blind:				
	870.65	Books, music, and pamphlets, in raised print, used exclusively by or for them	Free		Free	
	870.66	Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively	Free		Free	
	870.67	Other	Free		Free	"

(g) AUTHORITY TO LIMIT CERTAIN DUTY-FREE TREATMENT.—

(1)(A) The President may proclaim changes in the Tariff Schedules of the United States to narrow the scope of, place conditions upon, or otherwise eliminate the duty-free treatment accorded by reason of the amendments made by subsections (e) or (f) with respect to any type of article the duty-free treatment of which has significant adverse impact on a domestic industry (or portion thereof) manufacturing or producing a like or directly competitive article, if the effect of such change is consistent with the provisions of the relevant annexes of the Florence Agreement or the Nairobi Protocol.

(B) If the President proclaims changes to the Tariff Schedules of the United States under subparagraph (A), the rate of duty thereafter applicable to any article which is—

(i) affected by such action, and

(ii) imported from any source,

shall be the rate determined and proclaimed by the President as the rate which would then be applicable to such article from such source if this section had not been enacted.

(2) If the President determines that any duty-free treatment which is no longer in effect because of action taken under paragraph (1) could be restored, in whole or in part, without a resumption of significant adverse impact on a domestic industry or portion thereof, the President may proclaim changes to the Tariff Schedules of the United States to resume such duty-free treatment.

(3) Before taking any action under paragraph (1) or (2), the President shall afford an opportunity for interested government agencies and private persons to present their views concerning the proposed action.

(4) Any action in effect or any proceeding in progress under section 166 of the Educational, Scientific, and Cultural Materials Importation Act of 1982 on the day that Act is repealed shall be considered as an action or proceeding under this section and shall be continued or resumed under this section.

(h) AUTHORITY TO EXPAND CERTAIN DUTY-FREE TREATMENT ACCORDED BY REASON OF SUBSECTION (d).—

(1) If the President determines such action to be in the interest of the United States, the President may proclaim changes to the Tariff Schedules of the United States in order to remove or modify any condition or restriction imposed under headnote 1 to part 7 of schedule 8 (as amended by subsection (d) of this section) of such Schedules, on the importation of articles provided for in items 870.30 through 870.35, inclusive (except as to articles entered under the terms of headnote 1(a)(i) to part 7 of schedule 8) of such Schedules, in order to implement the provisions of annex C-1 of the Nairobi Protocol.

(2) Any change to the Tariff Schedules of the United States proclaimed under paragraph (1) shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date that is 15 days after the date on which the President proclaims such change.

(i) STATISTICAL INFORMATION.—In order to implement effectively the provisions of subsection (g), the Secretary of the Treasury, in conjunction with the Secretary of Commerce, shall take such actions as are necessary to obtain adequate statistical information with respect to articles to which amendments made by subsection (c) apply, in such detail and for such period as the Secretaries consider necessary.

(j) EFFECTIVE DATE.—

(1) The provisions of this section, and the repeal and amendments made by this section, shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) October 1, 1988, or

(B) the date that is 15 days after the deposit of the United States ratification of the Nairobi Protocol.

(2) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon request filed with the appropriate customs officer on or before the date that is 180 days after the later of the dates described in subparagraphs (A) and (B) of paragraph (1), any entry, or withdrawal from warehouse, of any article—

(A) which was made on or after August 12, 1985, and before such later date, and

(B) with respect to which there would have been no duty if the provisions of this section, or any amendments made by this section, applied to such entry or withdrawal,

shall be liquidated or reliquidated as though such entry or withdrawal had been made on or after such later date.

SEC. 1122. IMPLEMENTATION OF UNITED STATES-EC AGREEMENT ON CITRUS AND PASTA.

(a) PURPOSE.—The purpose of this section is to provide for the implementation of tariff reductions agreed to by the United States in the Agreement between the European Communities and the United States, concluded February 24, 1987, with respect to citrus and pasta.

(b) PROCLAMATION AUTHORITY.—

(1) The amendments made by subsection (c) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after a date occurring after September 30, 1988, that is proclaimed by the President as being appropriate to carry out the Agreement referred to in subsection (a).

(2) The President is authorized at any time to modify or terminate by proclamation any provision of law enacted by the amendments made by subsection (c).

(3) The rates of duty in column numbered 1 of the Tariff Schedules of the United States that are enacted by the amendments made by subsection (c) shall be treated—

(A) as not having the status of statutory provisions enacted by the Congress; but

(B) as having been proclaimed by the President as being required to carry out a foreign trade agreement to which the United States is a party.

(c) AMENDMENTS TO TARIFF SCHEDULES.—

(1) Whenever in this subsection an amendment is expressed in terms of an amendment to a schedule, headnote, item, the Appendix, or other provision, the reference shall be considered to be made to a schedule, headnote, item, the Appendix, or other provision of the Tariff Schedules of the United States.

(2) Subpart C of part 3 of schedule 1 is amended by striking out item 112.40 and inserting in lieu thereof the following items with a superior heading having the same degree of indentation as the article description in item 112.42:

"		Anchovies:				
	112.40	If entered in any calendar year before 3,000 metric tons of anchovies have been entered under this item in such calendar year	3% ad val.		Free (A,E,I)	30% ad val.

	112.41	Other	6% ad val.	Free (A,E,I)	30% ad val.	".

(3)(A) Item 117.65 is amended by striking out "9% ad val." and inserting in lieu thereof "Free".
(B) Item 117.67 is amended by striking out "12% ad val." and inserting in lieu thereof "Free".
(4) Subpart B of part 9 of Schedule 1 is amended by striking out item 147.29 and inserting in lieu thereof the following items with a superior heading having the same degree of indentation as the article description in item 147.30:

"		Mandarin, packed in airtight containers:				
	147.28	Satsuma, if entered in any calendar year before 40,000 metric tons of Satsuma oranges have been entered under this item in such calendar year	Free	Free (A,E,I)	1¢ per lb.	
	147.29	Other	0.2¢ per lb.	Free (A,E,I)	1¢ per lb.	".

(5) Subpart B of part 9 of Schedule 1 is amended—
(A) by striking out item 148.44 and inserting in lieu thereof the following items with a superior heading having the same degree of indentation as the article description in item 148.42:

"		Other:				
	148.43	In containers each holding not more than 0.3 gallon	20¢ per gal.	Free (E)	20¢ per gal.	
		In containers each holding more than 0.3 gallon:				
	148.44	If entered in any calendar year before 4,400 metric tons of olives have been entered under this item in such calendar year	10¢ per gal.	Free (E)	20¢ per gal.	
	148.45	Other	20¢ per gal.	Free (E)	20¢ per gal.	";

(B) by striking out item 148.48 and inserting in lieu thereof the following items with a superior heading having the same degree of indentation as the article description in item 148.46:

"		Other:				
	148.47	If entered in any calendar year before 730 metric tons of olives have been entered under this item in such calendar year	15¢ per gal.	Free (E)	30¢ per gal.	
	148.48	Other	30¢ per gal.	Free (E)	30¢ per gal.	";

(C) by striking out "or stuffed" in item 148.50;
(D) by redesignating items 148.52, 148.54, and 148.56 as items 148.55, 148.56, and 148.57, respectively;
(E) by inserting after item 148.50 the following new items with a superior heading having the same degree of indentation as the article description in item 148.50:

"		*Stuffed:*				
		In containers each holding not more than 0.3 gallon:				
		Place Packed:				
	148.51	*If entered in any calendar year before 2,700 metric tons of olives have been entered under this item in such calendar year*	*15¢ per gal.*	*Free (E)*	*30¢ per gal.*	
	148.52	*Other*	*30¢ per gal.*	*Free (E)*	*30¢ per gal.*	
	148.53	*Other*	*30¢ per gal.*	*Free (E)*	*30¢ per gal.*	
	148.54	*In containers each holding more than 0.3 gallon*	*30¢ per gal.*	*Free (E)*	*30¢ per gal.*	";

(F) by striking out "5¢ per lb." in item 148.55, as redesignated by paragraph (4), and inserting in lieu thereof "2.5¢ per lb."; and

(G) by striking out item 148.57, as redesignated by paragraph (4), and inserting in lieu thereof the following new items with the superior heading having the same degree of indentation as the article description in item 148.40:

"		*Otherwise prepared or preserved:*				
	148.57	*If entered in any calendar year before 550 metric tons of olives have been entered under this item in such calendar year*	*2.5¢ per lb.*	*Free (E)*	*5¢ per lb.*	
	148.58	*Other*	*5¢ per lb.*	*Free (E)*	*5¢ per lb.*	";

(6) Items 161.06 and 161.08 are each amended by striking out "16% ad val." and inserting in lieu thereof "8% ad val.".

(7) Item 161.71 is amended by striking out "2¢ per lb." and inserting in lieu thereof "1.35¢ per lb.".

(8) Item 167.15 is amended by striking out "3¢ per gal." and inserting in lieu thereof "1.5¢ per gal.".

(9)(A) Item 176.29 is amended by striking out "3.8¢ per lb. on contents and container" and inserting in lieu thereof "2.28¢ per lb. on contents and container.".

(B) Item 176.30 is amended by striking out "2.6¢ per lb." and inserting in lieu thereof "1.56¢ per lb.".

(d) REPORT.—The Trade Representative shall include in the semiannual report submitted under section 309(3) of the Trade Act of 1974 an assessment of whether the European Communities are in compliance with the agreement referred to in subsection (a).

SEC. 1123. EXTENSION OF INTERNATIONAL COFFEE AGREEMENT ACT OF 1980.

(a) EXTENSION.—Section 2 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356k) is amended by striking out "October 1, 1986" and inserting "October 1, 1989".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect January 1, 1987.

SEC. 1124. NEGOTIATIONS ON CURRENCY EXCHANGE RATES.

(a) FINDINGS.—The Congress finds that—

(1) the benefit of trade concessions can be adversely affected by misalignments in currency, and

(2) misalignments in currency caused by government policies intended to maintain an unfair trade advantage tend to nullify and impair trade concessions.

(b) NEGOTIATIONS.—Whenever, in the course of negotiating a trade agreement under this subtitle, the President is advised by the Secretary of the Treasury that a foreign country that is a party to the negotiations satisfies the criteria for initiating bilateral currency negotiations listed in section 3004(b) of this Act, the Secretary of the Treasury shall take action to initiate bilateral currency negotiations on an expedited basis with such foreign country.

SEC. 1125. REPORTS ON NEGOTIATIONS TO ELIMINATE WINE TRADE BARRIERS.

Before the close of the 13-month period beginning on the date of the enactment of this Act, the President shall update each report that the President submitted to the Committee on Ways and Means and the Committee on Finance under section 905(b) of the Wine Equity and Export Expansion Act of 1984 (19 U.S.C. 2804) and submit the updated report to both of such committees. Each updated report shall contain, with respect to the major wine trading country concerned—

(1) a description of each tariff or nontariff barrier to (or other distortion of) trade in United States wine of that country with respect to which the United States Trade Representative has carried out consultations since the report required under such section 905(b) was submitted;

(2) the status of the consultations described under paragraph (1); and

(3) information, explanations, and recommendations of the kind referred to in paragraph (1) (C), (D), and (E) of such section 905(b) that are based on developments (including the taking of relevant actions, if any, of a kind not contemplated at the time of the enactment of such 1984 Act) since the submission of the report required under such section.

Subtitle B—Implementation of the Harmonized Tariff Schedule

SEC. 1201. PURPOSES.

The purposes of this subtitle are—

(1) to approve the International Convention on the Harmonized Commodity Description and Coding System;

(2) to implement in United States law the nomenclature established internationally by the Convention; and

(3) to provide that the Convention shall be treated as a trade agreement obligation of the United States.

SEC. 1202. DEFINITIONS.

As used in this subtitle:

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

(2) The term "Convention" means the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, submitted to the Congress on June 15, 1987.

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

(4) The term "Federal agency" means any establishment in the executive branch of the United States Government.

(5) The term "old Schedules" means title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before the effective date of the amendment to such title under section 1204(a).

(6) The term "technical rectifications" means rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as—

(A) errors in spelling, numbering, or punctuation;

(B) errors in indentation;

(C) errors (including inadvertent omissions) in cross-references to headings or subheadings or notes; and

(D) other clerical or typographical errors.

SEC. 1203. CONGRESSIONAL APPROVAL OF UNITED STATES ACCESSION TO THE CONVENTION.

(a) CONGRESSIONAL APPROVAL.—The Congress approves the accession by the United States of America to the Convention.

(b) ACCEPTANCE OF THE FINAL LEGAL TEXT OF THE CONVENTION BY THE PRESIDENT.—The President may accept for the United States the final legal instruments embodying the Convention. The President shall submit a copy of each final instrument to the Congress on the date it becomes available.

(c) UNSPECIFIED PRIVATE REMEDIES NOT CREATED.—Neither the entry into force with respect to the United States of the Convention nor the enactment of this subtitle may be construed as creating any private right of action or remedy for which provision is not explicitly made under this subtitle or under other laws of the United States.

(d) TERMINATION.—The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) do not apply to the Convention.

SEC. 1204. ENACTMENT OF THE HARMONIZED TARIFF SCHEDULE.

(a) IN GENERAL.—The Tariff Act of 1930 is amended by striking out title I and inserting a new title I entitled "Title I—Harmonized Tariff Schedule of the United States" (hereinafter in this subtitle referred to as the "Harmonized Tariff Schedule") which—

(1) consists of—

(A) the General Notes;

(B) the General Rules of Interpretation;

(C) the Additional U.S. Rules of Interpretation;

(D) sections I to XXII, inclusive (encompassing chapters 1 to 99, and including all section and chapter notes, article provisions, and tariff and other treatment accorded thereto); and

(E) the Chemical Appendix to the Harmonized Tariff Schedule;

all conforming to the nomenclature of the Convention and as set forth in Publication No. 2030 of the Commission entitled "Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes" and Supplement No. 1 thereto; but

(2) does not include the statistical annotations, notes, annexes, suffixes, check digits, units of quantity, and other matters formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), nor the table of contents, footnotes, index, and other matters inserted for ease of reference, that are included in such Publication No. 2030 or Supplement No. 1 thereto.

(b) MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE.—At the earliest practicable date after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, the President shall—

(1) proclaim such modifications to the Harmonized Tariff Schedule as are consistent with the standards applied in converting the old Schedules into the format of the Convention, as reflected in such Publication No. 2030 and Supplement No. 1 thereto, and as are necessary or appropriate to implement—

(A) the future outstanding staged rate reductions authorized by the Congress in—

(i) the Trade Act of 1974 (19 U.S.C. 2101 et seq.) and the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) to reflect the tariff reductions that resulted from the Tokyo Round of multilateral trade negotiations, and

(ii) the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 1202 note) to reflect the tariff reduction resulting from the United States-Israel Free Trade Area Agreement,

(B) the applicable provisions of—

(i) statutes enacted,

(ii) executive actions taken, and

(iii) final judicial decisions rendered,

after January 1, 1988, and before the effective date of the Harmonized Tariff Schedule, and

(C) such technical rectifications as the President considers necessary; and

(2) take such action as the President considers necessary to bring trade agreements to which the United States is a party into conformity with the Harmonized Tariff Schedule.

(c) STATUS OF THE HARMONIZED TARIFF SCHEDULE.—

(1) The following shall be considered to be statutory provisions of law for all purposes:

(A) The provisions of the Harmonized Tariff Schedule as enacted by this subtitle.

(B) Each statutory amendment to the Harmonized Tariff Schedule.

(C) Each modification or change made to the Harmonized Tariff Schedule by the President under authority of law (including section 604 of the Trade Act of 1974).

(2) Neither the enactment of this subtitle nor the subsequent enactment of any amendment to the Harmonized Tariff Schedule, unless such subsequent enactment otherwise provides, may be construed as limiting the authority of the President—

(A) to effect the import treatment necessary or appropriate to carry out, modify, withdraw, suspend, or terminate, in whole or in part, trade agreements; or

(B) to take such other actions through the modification, continuance, or imposition of any rate of duty or other import restriction as may be necessary or appropriate under the authority of the President.

(3) If a rate of duty established in column 1 by the President by proclamation or Executive order is higher than the existing rate of duty in column 2, the President may by proclamation or Executive order increase such existing rate to the higher rate.

(4) If a rate of duty is suspended or terminated by the President by proclamation or Executive order and the proclamation or Executive order does not specify the rate that is to apply in lieu of the suspended or terminated rate, the last rate of duty that applied prior to the suspended or terminated rate shall be the effective rate of duty.

(d) INTERIM INFORMATIONAL USE OF HARMONIZED TARIFF SCHEDULE CLASSIFICATIONS.—Each—

(1) proclamation issued by the President;

(2) public notice issued by the Commission or other Federal agency; and

(3) finding, determination, order, recommendation, or other decision made by the Commission or other Federal agency;

during the period between the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 and the effective date of the Harmonized Tariff Schedule shall, if the proclamation, notice, or decision contains a reference to the tariff classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.

SEC. 1205. COMMISSION REVIEW OF, AND RECOMMENDATIONS REGARDING, THE HARMONIZED TARIFF SCHEDULE.

(a) IN GENERAL.—The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—

(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;

(2) to promote the uniform application of the Convention and particularly the Annex thereto;

(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;

(4) to alleviate unnecessary administrative burdens; and

(5) to make technical rectifications.

(b) AGENCY AND PUBLIC VIEWS REGARDING RECOMMENDATIONS.—In formulating recommendations under subsection (a), the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—

(1) shall give notice of the proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing; and

(2) may provide for a public hearing.

(c) SUBMISSION OF RECOMMENDATIONS.—The Commission shall submit recommendations under this section to the President in the form of a report that shall include a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report also shall include a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties.

(d) REQUIREMENTS REGARDING RECOMMENDATIONS.—The Commission may not recommend any modification to the Harmonized Tariff Schedule unless the modification meets the following requirements:

(1) The modification must—

(A) be consistent with the Convention or any amendment thereto recommended for adoption;

(B) be consistent with sound nomenclature principles; and

(C) ensure substantial rate neutrality.

(2) Any change to a rate of duty must be consequent to, or necessitated by, nomencla-

ture modifications that are recommended under this section.

(3) The modification must not alter existing conditions of competition for the affected United States industry, labor, or trade.

SEC. 1206. PRESIDENTIAL ACTION ON COMMISSION RECOMMENDATIONS.

(a) IN GENERAL.—The President may proclaim modifications, based on the recommendations by the Commission under section 1205, to the Harmonized Tariff Schedule if the President determines that the modifications—

(1) are in conformity with United States obligations under the Convention; and

(2) do not run counter to the national economic interest of the United States.

(b) LAY-OVER PERIOD.—

(1) The President may proclaim a modification under subsection (a) only after the expiration of the 60-day period beginning on the date on which the President submits a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the proposed modification and the reasons therefor.

(2) The 60-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(c) EFFECTIVE DATE OF MODIFICATIONS.—Modifications proclaimed by the President under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 1207. PUBLICATION OF THE HARMONIZED TARIFF SCHEDULE.

(a) IN GENERAL.—The Commission shall compile and publish, at appropriate intervals, and keep up to date the Harmonized Tariff Schedule and related information in the form of printed copy; and, if, in its judgment, such format would serve the public interest and convenience—

(1) in the form of microfilm images; or

(2) in the form of electronic media.

(b) CONTENT.—Publications under subsection (a), in whatever format, shall contain—

(1) the then current Harmonized Tariff Schedule;

(2) statistical annotations and related statistical information formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)); and

(3) such other matters as the Commission considers to be necessary or appropriate to carry out the purposes enumerated in the Preamble to the Convention.

SEC. 1208. IMPORT AND EXPORT STATISTICS.

The Secretary of Commerce shall compile, and make publicly available, the import and export trade statistics of the United States. Such statistics shall be conformed to the nomenclature of the Convention.

SEC. 1209. COORDINATION OF TRADE POLICY AND THE CONVENTION.

The United States Trade Representative is responsible for coordination of United States trade policy in relation to the Convention. Before formulating any United States position with respect to the Convention, including any proposed amendments thereto, the United States Trade Representative shall seek, and consider, information and advice from interested parties in the private sector (including a functional advisory committee) and from interested Federal agencies.

SEC. 1210. UNITED STATES PARTICIPATION ON THE CUSTOMS COOPERATION COUNCIL REGARDING THE CONVENTION.

(a) PRINCIPAL UNITED STATES AGENCIES.—

(1) Subject to the policy direction of the Office of the United States Trade Representative under section 1209, the Department of the Treasury, the Department of Commerce, and the Commission shall, with respect to the activities of the Customs Cooperation Council relating to the Convention—

(A) be primarily responsible for formulating United States Government positions on technical and procedural issues; and

(B) represent the United States Government.

(2) The Department of Agriculture and other interested Federal agencies shall provide to the Department of the Treasury, the Department of Commerce, and the Commission technical advice and assistance relating to the functions referred to in paragraph (1).

(b) DEVELOPMENT OF TECHNICAL PROPOSALS.—

(1) In connection with responsibilities arising from the implementation of the Convention and under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) regarding United States programs for the development of adequate and comparable statistical information on merchandise trade, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall prepare technical proposals that are appropriate or required to assure that the United States contribution to the development of the Convention recognizes the needs of the United States business community for a Convention which reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices.

(2) In carrying out this subsection, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall—

(A) solicit and consider the views of interested parties in the private sector (including a functional advisory committee) and of interested Federal agencies;

(B) establish procedures for reviewing, and developing appropriate responses to, inquiries and complaints from interested parties concerning articles produced in and exported from the United States; and

(C) where appropriate, establish procedures for—

(i) ensuring that the dispute settlement provisions and other relevant procedures available under the Convention are utilized to promote United States export interests, and

(ii) submitting classification questions to the Harmonized System Committee of the Customs Cooperation Council.

(c) AVAILABILITY OF CUSTOMS COOPERATION COUNCIL PUBLICATIONS.—As soon as practicable after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, and periodically thereafter as appropriate, the Commission shall see to the publication of—

(1) summary records of the Harmonized System Committee of the Customs Cooperation Council; and

(2) subject to applicable copyright laws, the Explanatory Notes, Classification Opinions, and other instruments of the Customs Cooperation Council relating to the Convention.

SEC. 1211. TRANSITION TO THE HARMONIZED TARIFF SCHEDULE.

(a) EXISTING EXECUTIVE ACTIONS.—

(1) The appropriate officers of the United States Government shall take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule all proclamations, regulations, rulings, notices, findings, determinations, orders, recommendations, and other written actions that—

(A) are in effect on the day before the effective date of the Harmonized Tariff Schedule; and

(B) contain references to the tariff classification of articles under the old Schedules.

(2) Neither the repeal of the old Schedules, nor the failure of any officer of the United States Government to make the conforming changes required under paragraph (1), shall affect to any extent the validity or effect of the proclamation, regulation, ruling, notice, finding, determination, order, recommendation, or other action referred to in paragraph (1).

(b) GENERALIZED SYSTEM OF PREFERENCES CONVERSION.—

(1) The review of the proposed conversion of the Generalized System of Preferences program to the Convention tariff nomenclature, initiated by the Office of the United States Trade Representative by notice published in the Federal Register on December 8, 1986 (at page 44,163 of volume 51 thereof), shall be treated as satisfying the requirements of sections 503(a) and 504(c)(3) of the Trade Act of 1974 (19 U.S.C. 2463(a), 2464(c)(3)).

(2) In applying section 504(c)(1) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)) for calendar year 1989, the reference in such section to July 1 shall be treated as a reference to September 1.

(c) IMPORT RESTRICTIONS UNDER THE AGRICULTURAL ADJUSTMENT ACT.—

(1) Whenever the President determines that the conversion of an import restriction proclaimed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) from part 3 of the Appendix to the old Schedules to subchapter IV of chapter 99 of the Harmonized Tariff Schedule results in—

(A) an article that was previously subject to the restriction being excluded from the restriction; or

(B) an article not previously subject to the restriction being included within the restriction;

the President may proclaim changes in subchapter IV of chapter 99 of the Harmonized Tariff Schedule to conform that subchapter to the fullest extent possible to part 3 of the Appendix to the old Schedules.

(2) Whenever the President determines that the conversion from headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules to Additional U.S. Note 2, chapter 17, of the Harmonized Tariff Schedule results in—

(A) an article that was previously covered by such headnote being excluded from coverage; or

(B) an article not previously covered by such headnote being included in coverage;

the President may proclaim changes in Additional U.S. Note 2, chapter 17 of the Harmonized Tariff Schedule to conform that note to the fullest extent possible to headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules.

(3) No change to the Harmonized Tariff Schedule may be proclaimed under paragraph (1) or (2) after June 30, 1990.

(d) CERTAIN PROTESTS AND PETITIONS UNDER THE CUSTOMS LAW.—

(1)(A) This subtitle may not be considered to divest the courts of jurisdiction over—

(i) any protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514); or

(ii) any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516);

covering articles entered before the effective date of the Harmonized Tariff Schedule.

(B) Nothing in this subtitle shall affect the jurisdiction of the courts with respect to articles entered after the effective date of the Harmonized Tariff Schedule.

(2)(A) If any protest or petition referred to in paragraph (1)(A) is sustained in whole or in part by a final judicial decision, the entries subject to that protest or petition and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with such final judicial decision under the old Schedules.

(B) At the earliest practicable date after the effective date of the Harmonized Tariff Schedule, the Commission shall initiate an investigation under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) of those final judicial decisions referred to in subparagraph (A) that—

(i) are published during the 2-year period beginning on February 1, 1988; and

(ii) would have affected tariff treatment if they had been published during the period of the conversion of the old Schedules into the format of the Convention.

No later than September 1, 1990, the Commission shall report the results of the investigation to the President, the Committee on Ways and Means, and the Committee on Finance, and shall recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion into the format of the Convention occurred.

(3) The President shall review all changes recommended by the Commission under paragraph (2)(B) and shall, as soon as practicable, proclaim such of those changes, if any, which he decides are necessary or appropriate to conform such Schedule to the final judicial decisions. Any such change shall be effective with respect to—

(A) entries made on or after the date of such proclamation; and

(B) entries made on or after the effective date of the Harmonized Tariff Schedule if, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), application for liquidation or reliquidation thereof is made by the importer to the customs officer concerned within 180 days after the effective date of such proclamation.

(4) If any protest or petition referred to in paragraph (1)(A) is not sustained in whole or in part by a final judicial decision, the entries subject to that petition or protest and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with the final judicial decision under the old Schedules.

SEC. 1212. REFERENCE TO THE HARMONIZED TARIFF SCHEDULE.

Any reference in any law to the "Tariff Schedules of the United States", "the Tariff Schedules", "such Schedules", and any other general reference that clearly refers to the old Schedules shall be treated as a reference to the Harmonized Tariff Schedule.

SEC. 1213. TECHNICAL AMENDMENTS.

(a) TRADE ACT OF 1974.—Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) is amended by striking out "including modification," and inserting "including removal, modification,".

(b) TARIFF CLASSIFICATION ACT OF 1962.—Section 201 of the Tariff Classification Act of 1962 (76 Stat. 72, 74) is repealed.

(c) TARIFF ACT OF 1930.—Section 315(d) of the Tariff Act of 1930 (19 U.S.C. 1315(d)) is amended by adding at the end thereof the following: "This subsection shall not apply with respect to increases in rates of duty resulting from the enactment of the Harmonized Tariff Schedule of the United States to replace the Tariff Schedules of the United States.".

SEC. 1214. CONFORMING AMENDMENTS.

(a) CODIFIED TITLES.—

(1) Section 374(a)(3) of title 10 of the United States Code is amended by striking out "general headnote 2 of the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(2) Section 301 of title 13 of the United States Code is amended—

(A) by striking out "Tariff Schedules of the United States Annotated and general statistical headnote 1 thereof," in subsection (b) and inserting "Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes and general statistical note 1 thereof,";

(B) by striking out "item in the Tariff Schedules of the United States Annotated" in subsection (e) and inserting "heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes"; and

(C) by amending subsection (f)—

(i) by striking out "item of the Tariff Schedules of the United States Annotated" and inserting "heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes", and

(ii) by striking out "under that item" each place it appears and inserting "under that heading or subheading".

(3) Section 1295(a)(7) of title 28 of the United States Code is amended by striking out "headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States" and inserting "U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States".

(b) TOBACCO ADJUSTMENT ACT OF 1983.—Section 213(a)(2) of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r(a)(2)) is amended by striking out "Schedule 1, Part 13, Tariff Schedules of the United States" and inserting "chapter 24 of the Harmonized Tariff Schedule of the United States".

(c) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274) is amended—

(1) by striking out "general headnote 2 to the Tariff Schedules of the United States" in subsection (b) and inserting "general note 2 of the Harmonized Tariff Schedule of the United States"; and

(2) by striking out "general headnote 2 to the Tariff Schedules of the United States" in subsection (c)(2) and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(d) CONSUMER PRODUCT SAFETY ACT.—Section 15(d) and section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2064(d) and 2066(a)) are each amended by striking out "general headnote 2 to the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(e) TOXIC SUBSTANCES CONTROL ACT.—

(1) Section 3(7) of the Toxic Substances Control Act (15 U.S.C. 2602(7)) is amended by striking out "general headnote 2 of the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(2) Section 13(a)(1) of such Act (15 U.S.C. 2612(a)(1)) is amended by striking out "general headnote 2 to the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(f) EMERGENCY WETLANDS RESOURCES ACT OF 1986.—Section 203 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3912) is amended by striking out "subpart A of part 5 of schedule 7 of the Tariff Schedules of the United States" and inserting "chapter 93 of the Harmonized Tariff Schedule of the United States".

(g) COBRA OF 1985.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended—

(1) by striking out "schedule 8 of the Tariff Schedules of the United States" in subsection (a)(9)(A) and inserting "chapter 98 of the Harmonized Tariff Schedule of the United States";

(2) by striking out "General Headnote 3(e)(vi) or (vii)" in subsection (a)(9)(C) and inserting "general note 3(c)(v)"; and

(3) by striking out "headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States" in subsection (c)(3) and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(h) TARIFF ACT OF 1930.—The Tariff Act of 1930 is amended as follows:

(1) Section 312(f) (19 U.S.C. 1312(f)) is amended—

(A) by amending paragraph (1)—

(i) by striking out "schedule 6, part 1, of the Tariff Schedules of the United States," and inserting "chapter 26 of the Harmonized Tariff Schedule of the United States,";

(ii) by striking out "schedule 6, part 2, of such schedules," and inserting "chapters 71 through 83 of the Harmonized Tariff Schedule of the United States,"; and

(iii) by striking out the quotation marks surrounding "metal waste and scrap" and "unwrought metal";

(B) by amending paragraph (2)(A)—

(i) by striking out "part 2 of schedule 6" and inserting "chapters 71 through 83 of the Harmonized Tariff Schedule of the United States";

(ii) by striking out "part 1 of schedule 6" and inserting "chapter 26 of the Harmonized Tariff Schedule of the United States", and

(iii) by striking out the quotation marks surrounding "unwrought metal"; and

(C) by amending paragraph (3) by striking out "as defined in part 1 of schedule 6" and inserting "of chapter 26 of the Harmonized Tariff Schedule of the United States".

(2) Section 321(a)(2)(B) (19 U.S.C. 1321(a)(2)(B)) is amended by striking out "item 812.25 or 813.31" and inserting "subheading 9804.00.30 or 9804.00.70".

(3) Section 337(j) (19 U.S.C. 1337(j)) is amended by striking out "general headnote 2 of the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(4) Section 466(f) (19 U.S.C. 1466(f)) is amended by striking out "headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States" and inserting "general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States".

(5) Section 498(a)(1) (19 U.S.C. 1498(a)(1)) is amended—

(A) by striking out subparagraphs (A), (B), and (C) and inserting the following:

"(A) chapters 50 through 63;

"(B) chapters 39 through 43, 61 through 65, 67 and 95; and

"(C) subchapters III and IV of chapter 99;"; and

(B) by striking out "of the Tariff Schedules of the United States," and inserting "of the Harmonized Tariff Schedule of the United States,".

(i) AUTOMOTIVE PRODUCTS TRADE ACT OF 1965.—Section 201(a) and (b) of the Automotive Products Trade Act of 1965 (19 U.S.C. 2011(a) and (b)) are each amended by striking out "Tariff Schedules of the United States" and inserting "Harmonized Tariff Schedule of the United States".

(j) TRADE ACT OF 1974.—The Trade Act of 1974 is amended as follows:

(1) Section 128(b) (19 U.S.C. 2138(b)) is amended to read as follows:

"(b) The President shall exercise his authority under subsection (a) of this section only with respect to the following subheadings listed in the Harmonized Tariff Schedule of the United States—

"(1) transistors (provided for in subheadings 8541.21.00, 8541.29.00, and 8541.40.70);

"(2) diodes and rectifiers (provided for in subheadings 8541.10.00, 8541.30.00, and 8541.40.60);

"(3) monolithic integrated circuits (provided for in subheadings 8542.11.00 and 8542.19.00);

"(4) other integrated circuits (provided for in subheading 8542.20.00);

"(5) other components (provided for in subheading 8541.50.00);

"(6) parts of semiconductors (provided for in subheadings 8541.90.00 and 8542.90.00); and

"(7) units of automatic data processing machines (provided for in subheadings 8471.92.20, 8471.92.30, 8471.92.70, 8471.92.80, 8471.93.10, 8471.93.15, 8471.93.30, 8471.93.50, 8471.99.15, and 8471.99.60) and parts (provided for in subheading 8473.30.40), all the foregoing not incorporating a cathode ray tube.".

(2) Section 203(f) (19 U.S.C. 2253(f)) is amended—

(A) by striking out "item 806.30 or 807.00 of the Tariff Schedules of the United States" in paragraph (1) and inserting "subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "item 806.30 or item 807.00" in paragraph (3) and inserting "subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States".

(3) Section 404(c) (19 U.S.C. 2434(c)) is amended by striking out "Tariff Schedules for the United States" and inserting "Harmonized Tariff Schedule of the United States".

(4) Section 407(c)(3) and section 604 (19 U.S.C. 2437(c)(3) and 2483) are each amended by striking out "Tariff Schedules of the United States" and inserting "Harmonized Tariff Schedule of the United States".

(5) Section 601(7) (19 U.S.C. 2481(7)) is amended by striking out "schedules 1 through 7 of the Tariff Schedules of the United States" and inserting "chapters 1 through 97 of the Harmonized Tariff Schedule of the United States".

(k) TRADE AGREEMENTS ACT OF 1979.—Section 1102(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2581(b)(3)) is amended by striking out "headnotes of the Tariff Schedules of the United States" and inserting "notes of the Harmonized Tariff Schedule of the United States".

(l) ACT OF MARCH 2, 1897.—Section 1 of the Act of March 2, 1897 (29 Stat. 604) (21 U.S.C. 41) is amended by striking out "Tariff Schedules of the United States" and inserting "Harmonized Tariff Schedule of the United States".

(m) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—Section 1001(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 951(a)(2)) is amended by striking out "general headnote 2 to the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(n) COMPREHENSIVE ANTI-APARTHEID ACT OF 1986.—Section 309(b) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5059(b)) is amended by striking out "item 812.10 or 813.10 of the Tariff Schedules of the United States" and inserting "subheading 9804.00.20 or 9804.00.45 of the Harmonized Tariff Schedule of the United States".

(o) STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT.—Section 13 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h-4) is amended by striking out "general headnote 3(d) of the Tariff Schedules of the United States" and inserting "general note 3(b) of the Harmonized Tariff Schedule of the United States".

(p) INTERNAL REVENUE CODE OF 1986.—

(1) Section 7652(e)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 7652(e)(3)) is amended by striking out "item 169.13 or 169.14 of the Tariff Schedules of the United States" and inserting "subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States".

(2) Section 9504(b)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 9504(b)(1)(B)) is amended—

(A) by striking out "subpart B of part 5 of schedule 7 of the Tariff Schedules of the United States" and inserting "heading 9507 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "subpart D of part 6 of schedule 6 of such Schedules" and inserting "chapter 89 of the Harmonized Tariff Schedule of the United States".

(q) CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—The Caribbean Basin Economic Recovery Act is amended as follows:

(1) Section 212(a)(1)(C) (19 U.S.C. 2702(a)(1)(C)) is amended by striking out "'TSUS' means Tariff Schedules of the United States" and inserting " 'HTS' means Harmonized Tariff Schedule of the United States".

(2) Section 213 (19 U.S.C. 2703) is amended as follows:

(A) Subsection (b) is amended—

(i) by striking out "part 10 of schedule 4 of the TSUS" in paragraph (4) and inserting "headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States"; and

(ii) by striking out "TSUS" in paragraph (5) and inserting "HTS".

(B) Subsection (c) is amended—

(i) by striking out "items 155.20 and 155.30 of the TSUS" in paragraph (1)(A)(i) and inserting "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 Harmonized Tariff Schedule of the United States"; and

(ii) by striking out "subpart B of part 2 of schedule 1 of the TSUS" in paragraph (1)(A)(ii) and inserting "chapters 2 and 16 of the Harmonized Tariff Schedule of the United States".

(C) Subsection (d) is amended by striking out "items 155.20 and 155.30 of the TSUS" and inserting "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 Harmonized Tariff Schedule of the United States".

(D) Subsection (f)(5) is amended—

(i) by amending subparagraph (A) to read as follows:

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

(ii) by striking out "items 135.10 through 138.46 of the TSUS" in subparagraph (B) and inserting "headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS";

(iii) by striking out subparagraph (C);

(iv) by redesignating subparagraph (D) as subparagraph (C) and by striking out "items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS" in such redesignated subparagraph and inserting "subheadings 0804.20 through 0810.90 (except citrons of subheading 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS";

(v) by striking out subparagraph (E); and

(vi) by redesignating subparagraph (F) as subparagraph (E) and by striking out "items 165.25 and 165.35 of the TSUS" in such redesignated subparagraph and inserting "subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS".

(r) ACT RELATING TO REFORESTATION TRUST FUND.—Section 303(b)(1) of the Act of October 14, 1980 (16 U.S.C. 1606a(b)(1)) is amended to read as follows:

"(b)(1) Subject to the limitation in paragraph (2), the Secretary of the Treasury shall transfer to the Trust Fund an amount equal to the sum of the tariffs received in the Treasury after January 1, 1989, under headings 4401 through 4412 and subheadings 4418.50.00, 4418.90.20, 4420.10.00, 4420.90.80, 4421.90.10 through 4421.90.20, and 4421.90.70 of chapter 44, subheadings 6808.00.00 and 6809.11.00 of chapter 68 and subheading 9614.10.00 of chapter 96 of the Harmonized Tariff Schedule of the United States.".

(s) TRADE AND TARIFF ACT OF 1984.—The Trade and Tariff Act of 1984 (Public Law 98-573) is amended as follows:

(1) Section 231(a)(1) is amended by striking out "Tariff Schedules of the United States" and inserting "Harmonized Tariff Schedule of the United States".

(2) Section 239 is amended by striking out "headnote 6 of part 4 of schedule 8 of the Tariff Schedules of the United States" and inserting "U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States".

(3) Section 240 is amended—

(A) by striking out "headnote 6(a) of part 4 of schedule 8 of the Tariff Schedules of the United States" in subsection (a)(1)(A) and inserting "U.S. note 6(a) to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "headnote 1 of part 4 of schedule 8" in subsection (e) and inserting "U.S. note 1 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States".

(4) Section 404(e) is amended—

(A) by amending paragraphs (1) and (2) to read as follows:

"(1) live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule of the United States (19

U.S.C. 1202, hereinafter referred to as the 'HTS';

"(2) 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) by striking out paragraphs (3), (4), and (5); and

(C) by striking out paragraph (6) and inserting the following:

"(3) 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.".

(t) TRADE AGREEMENTS ACT OF 1979.—The Trade Agreements Act of 1979 (Public Law 96-39) is amended as follows:

(1) Section 701(c)(1) is amended to read as follows:

"(1) QUOTA CHEESE.—The term 'quota cheese' means the articles provided for in the following subheadings of the Harmonized Tariff Schedule of the United States:

"(A) 0406.10.00 (except whey cheese, curd, and cheese, cheese substitutes for cheese mixtures containing: Roquefort, Stilton produced in the United Kingdom, Bryndza, Gjetost, Goya in original loaves, Gammelost and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses);

"(B) 0406.20.20 (except Stilton produced in the United Kingdom);

"(C) 0406.20.30;

"(D) 0406.20.35;

"(E) 0406.20.40;

"(F) 0406.20.50;

"(G) 0406.20.60 (except cheeses containing or processed from: Stilton produced in the United Kingdom, Roquefort, Bryndza, Gjetost, Gammelost and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses);

"(H) 0406.30.10 (except Stilton produced in the United Kingdom);

"(I) 0406.30.20;

"(J) 0406.30.30;

"(K) 0406.30.40;

"(L) 0406.30.50;

"(M) 0406.30.60 (except cheeses containing or processed from: Stilton produced in the United Kingdom, Roquefort, Bryndza, Gjetost, Gammelost and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses);

"(N) 0406.40.60 (except Stilton produced in the United Kingdom);

"(O) 0406.40.80 (except Stilton produced in the United Kingdom);

"(P) 0406.90.10;

"(Q) 0406.90.15;

"(R) 0406.90.30 (except Goya in original loaves);

"(S) 0406.90.35;

"(T) 0406.90.40;

"(U) 0406.90.45 (except Gammelost and Nokkelost);

"(V) 0406.90.65;

"(W) 0406.90.70; and

"(X) 0406.90.80 (except cheeses containing or processed from: Stilton produced in the United Kingdom, Roquefort, Bryndza, Gjetost, Gammelost, and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses).".

(2) Section 703 is amended—

(A) by striking out "item 950.15 of the Tariff Schedules of the United States" and inserting "subheading 9904.10.63 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "item 950.16 of the Tariff Schedules of the United States" and inserting "subheading 9904.10.66 of the Harmonized Tariff Schedule of the United States".

(3) Section 855 is amended—

(A) by striking out "item set forth in subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States" in subsection (a) and inserting "article provided for in subheading 2207.10.30 and heading 2208 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "item set forth in rate column numbered 1 of subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States" in subsection (b) and inserting "article as set forth in rate of duty column numbered 1 of subheading 2207.10.30 and heading 2208 of the Harmonized Tariff Schedule of the United States".

(u) MEAT IMPORT ACT OF 1979.—The Meat Import Act of 1979 (19 U.S.C. 1202 note) is amended—

(1) by amending subsection (b)(2)—

(A) by striking out "Tariff Schedules of the United States" and inserting "Harmonized Tariff Schedule of the United States",

(B) by striking out "item 106.10" in subparagraph (A) and inserting "subheadings 0201.10.00, 0201.20.60, 0201.30.60, 0202.10.00, 0202.20.60 and 0202.30.60",

(C) by striking out "cattle" in subparagraph (A) and inserting "bovine",

(D) by striking out "items 106.22 and 106.25" in subparagraph (B) and inserting "subheadings 0204.50.00, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, and 0204.43.40", and

(E) by amending subparagraph (C) to read as follows:

"(C) subheadings 0201.20.40, 0201.30.40, 0202.20.40, and 0202.30.40 (relating to processed meat of beef or veal other than high quality beef cuts).";

(2) by striking out "items 100.40, 100.43, 100.45, 100.53, and 100.55 of such Schedules" in the sentence following subsection (c)(2) and inserting "subheadings 0102.90.20 and 0102.90.40 of the Harmonized Tariff Schedule of the United States"; and

(3) by striking out "item 107.61 of the Tariff Schedules of the United States" in subsection (f)(1) and inserting "subheadings 0201.20.20, 0201.30.20, 0202.20.20, and 0202.30.20 of the Harmonized Tariff Schedule of the United States".

(v) NATIONAL WOOL ACT OF 1954.—Sections 704 and 705 of the National Wool Act of 1954 (7 U.S.C. 1783 and 1784) are each amended by striking out "all articles subject to duty under schedule 11 of the Tariff Act of 1930, as amended" and inserting "wool or fine animal hair, and articles thereof, as provided for in the Harmonized Tariff Schedule of the United States".

(w) AGRICULTURAL ACT OF 1949.—Section 103(f)(3) of the Agricultural Act of 1949 (7 U.S.C. 1444(f)(3)) is amended by striking out "items 955.01 through 955.03 of the Appendix to the Tariff Schedules of the United States" and inserting "subheadings 9904.30.10 through 9904.30.30 of chapter 99 of the Harmonized Tariff Schedule of the United States".

SEC. 1215. NEGOTIATING AUTHORITY FOR CERTAIN ADP EQUIPMENT.

Section 128(b) of the Trade Act of 1974 (19 U.S.C. 2138(b)), as amended by section 1212(j)(1) of this Act, is further amended—

(1) by striking out "and" at the end of paragraph (6);

(2) by striking out "tube." and inserting "tube; and" in paragraph (7); and

(3) by adding at the end thereof the following new paragraph:

"(8) Digital processing units for automatic data processing machines, unhoused, consisting of a printed circuit (single or multiple) with one or more electronic integrated circuits or other semiconductor devices mounted directly thereon, certified as units designed for use other than in an automatic data processing machine of subheading 8471.20 (provided for in subheading 8471.91).".

SEC. 1216. COMMISSION REPORT ON OPERATION OF SUBTITLE.

The Commission, in consultation with other appropriate Federal agencies, shall prepare, and submit to the Congress and to the President, a report regarding the operation of this subtitle during the 12-month period commencing on the effective date of the Harmonized Tariff Schedule. The report shall be submitted to the Congress and to the President before the close of the 6-month period beginning on the day after the last day of such 12-month period.

SEC. 1217. EFFECTIVE DATES.

(a) ACCESSION TO CONVENTION AND PROVISIONS OTHER THAN THE IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.—Except as provided in subsection (b), the provisions of this subtitle take effect on the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988.

(b) IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.—The effective date of the Harmonized Tariff Schedule is January 1, 1989. On such date—

(1) the amendments made by sections 1204(a), 1213, 1214, and 1215 take effect and apply with respect to articles entered on or after such date; and

(2) sections 1204(c), 1211, and 1212 take effect.

Subtitle C—Response to Unfair International Trade Practices

PART 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

SEC. 1301. REVISION OF CHAPTER 1 OF TITLE III OF THE TRADE ACT OF 1974.

(a) IN GENERAL.—Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411. et seq.) is amended to read as follows:

"CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

"SEC. 301. ACTIONS BY UNITED STATES TRADE REPRESENTATIVE.

"(a) MANDATORY ACTION.—

"(1) If the United States Trade Representative determines under section 304(a)(1) 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), 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

"(II) 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 this chapter, 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.—If the Trade Representative determines under section 304(a)(1) 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), 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), the Trade Representative is authorized to—

"(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),

"(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—

"(I) 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)—

"(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 302(a), or

"(ii) a determination to initiate an investigation is made by the Trade Representative under 302(b).

"(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) 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 paragraph (1)(C)(iii) shall provide compensatory trade benefits 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), 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), 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.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this chapter—

"(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

"(III) 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—

"(I) 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 (B)(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.".

"(D) 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.

"(E) 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 302(a)(4)(B), 304(b)(1)(A), 306(c)(2), and 307(a)(2), 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).

"SEC. 302. INITIATION OF INVESTIGATIONS.

"(a) PETITIONS.—

"(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 301 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.—

"(1)(A) If the Trade Representative determines that an investigation should be initiated under this chapter with respect to any matter in order to determine whether the matter is actionable under section 301, 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 135.

"(2)(A) By no later than the date that is 30 days after the date on which a country is identified under section 182(a)(2), the Trade Representative shall initiate an investigation under this chapter with respect to any act, policy, or practice of that country that—

"(i) was the basis for such identification, and

"(ii) is not at that time the subject of any other investigation or action under this chapter.

"(B) The Trade Representative is not required under subparagraph (A) to initiate an investigation under this chapter 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.

"(C) 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—

"(i) the reasons for the determination, and

"(ii) the United States economic interests that would be adversely affected by the investigation.

"(D) 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 chapter by reason of subparagraph (A).".

"(c) DISCRETION.—In determining whether to initiate an investigation under subsection (a) or (b) of any act, policy, or practice that is enumerated in any provision of section 301(d), the Trade Representative shall have discretion to determine whether action under section 301 would be effective in addressing such act, policy, or practice.

"SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

"(a) IN GENERAL.—

"(1) On the date on which an investigation is initiated under section 302, 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 302 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 135 in preparing United States presentations for consultations and dispute settlement proceedings.

"(b) DELAY OF REQUEST FOR CONSULTATIONS.—

"(1) Notwithstanding the provisions of subsection (a)—

"(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations under subsection (a) 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 304 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 309(a)(3).

"SEC. 304. DETERMINATIONS BY THE TRADE REPRESENTATIVE.

"(a) IN GENERAL.—

"(1) On the basis of the investigation initiated under section 302 and the consultations (and the proceedings, if applicable) under section 303, 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 301 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 301.

"(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 2(c)(5) of the Trade Agreements Act of 1979), 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 under this chapter by reason of section 302(b)(2) 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 302(b)(2) 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 2(c)(5) of the Trade Agreements Act of 1979), 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), 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 135, 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), comply with such subparagraphs.

"(c) PUBLICATION.—The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1), together with a description of the facts on which such determination is based.

"SEC. 305. IMPLEMENTATION OF ACTIONS.

"(a) ACTIONS TO BE TAKEN UNDER SECTION 301.—

"(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 304(a)(1)(B) to take under section 301, 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 301—

"(i) if—

"(I) in the case of an investigation initiated under section 302(a), the petitioner requests a delay, or

"(II) in the case of an investigation initiated under section 302(b)(1) or to which section 304(a)(3)(B) 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 301 with respect to any investigation to which section 304(a)(3)(A) applies.

"(C) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 301 with respect to any investigation to which section 304(a)(3)(B) 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 304(a)(1)(A) involving export targeting by a foreign country and determines to take no action under section 301 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 304(a)(1)(A), 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 304(a)(1)(A).".

"SEC. 306. MONITORING OF FOREIGN COMPLIANCE.

"(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 301(a)(2)(B) that is entered into under subsection (a) or (b) of section 301, 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 301.

"(b) FURTHER ACTION.—If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section 301(a). For purposes of section 301, any such determination shall be treated as a determination made under section 304(a)(1).

"(c) CONSULTATIONS.—Before making any determination under subsection (b), the Trade Representative shall—

"(1) consult with the petitioner, if any, involved in the initial investigation under this chapter and with representatives of the domestic industry concerned; and

"(2) provide an opportunity for the presentation of views by interested persons.".

"SEC. 307. MODIFICATION AND TERMINATION OF ACTIONS.

"(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 301 if—

"(A) any of the conditions described in section 301(a)(2) 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 301(b) and is no longer appropriate.

"(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 301, 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 301 and the reasons therefor.

"(c) REVIEW OF NECESSITY.—

"(1) If—

"(A) a particular action has been taken under section 301 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 301, the Trade Representative shall conduct a review of—

"(A) the effectiveness in achieving the objectives of section 301 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. 308. REQUEST FOR INFORMATION.

"(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) 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, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter 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 chapter, 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. 309. ADMINISTRATION.

"The Trade Representative shall—

"(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter,

"(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under this chapter, 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 302,

"(B) developments in, and the current status of, each investigation or proceeding under this chapter,

"(C) the actions taken, or the reasons for no action, by the Trade Representative under section 301 with respect to investigations conducted under this chapter,

"(D) the commercial effects of actions taken under section 301.".

(b) CONFORMING AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking out the items relating to chapter 1 of title III and inserting in lieu thereof the following:

"CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO FOREIGN TRADE PRACTICES

"Sec. 301. Actions by United States Trade Representative.
"Sec. 302. Initiation of investigations.
"Sec. 303. Consultation upon initiation of investigation.
"Sec. 304. Determinations by the Trade Representative.
"Sec. 305. Implementation of actions.
"Sec. 306. Monitoring of foreign compliance.
"Sec. 307. Modification and termination of actions.
"Sec. 308. Request for information.
"Sec. 309. Administration.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) petitions filed, and investigations initiated, under section 302 of the Trade Act of 1974 on or after the date of the enactment of this Act; and

(2) petitions filed, and investigations initiated, before the date of enactment of this Act, if by that date no decision had been made under section 304 regarding the petition or investigation.

SEC. 1302. IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES.

(a) IN GENERAL.—Chapter 1 of title III of the Trade Act of 1974, as amended by section 1301, is further amended by adding at the end thereof the following new section:

"SEC. 310. IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES.

"(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 181(b) 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 181(a)(1)(A), 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), the Trade Representative shall initiate under section 302(b)(1) investigations under this chapter with respect to all of those priority practices identified in such report by reason of subsection (a)(1)(D) for each of the priority foreign countries. The Trade Representative may initiate investigations under section 302(b)(1) with respect to all other priority practices identified under subsection (a)(1)(A).

"(c) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—

"(1) In the consultations with a priority foreign country identified under subsection (a)(1) that the Trade Representative is re-

quired to request under section 303(a) with respect to an investigation initiated by reason of subsection (b), 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) 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 chapter by reason of subsection (b) 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 301 with respect to such investigation may be required under section 305(a) 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 301 with respect to such investigation may be required under section 305(a) 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) 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) for each priority foreign country that has been identified under subsection (a)(1)(B),

"(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), substantial progress during each year within the 3-year period described in subsection (c)(1)(A) toward the goal of eliminating the priority practices identified under subsection (a)(1)(A) 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), the elimination of such practices,

"(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 301 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) 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) with respect to such foreign country have been eliminated.".

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 309 the following new item:

"Sec. 310. Identification of trade liberalization priorities.".

SEC. 1303. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS.

(a) FINDINGS AND PURPOSE.—

(1) The Congress finds that—

(A) international protection of intellectual property rights is vital to the international competitiveness of United States persons that rely on protection of intellectual property rights; and

(B) the absence of adequate and effective protection of United States intellectual property rights, and the denial of fair and equitable market access, seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States.

(2) The purpose of this section is to provide for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights and fair and equitable market access for United States persons that rely on protection of intellectual property rights.

(b) IN GENERAL.—Chapter 8 of title I of the Trade Act of 1974 is amended by adding at the end thereof the following new section:

"SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

"(a) IN GENERAL.—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 181(b), 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.—

"(1) In identifying priority foreign countries under subsection (a)(2), 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), 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 181(b) and petitions submitted under section 302.

"(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) 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).

"(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

"(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 semiannual report submitted to the Congress under section 309(3) 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.—For purposes of this section—

"(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, 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 denies adequate and effective protection of intellectual property rights if the foreign country denies 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 barriers.

"(e) PUBLICATION.—The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of action under subsection (c).".

(c) CONFORMING AMENDMENTS.—

(1) The heading for chapter 8 of title I of the Trade Act of 1974 is amended to read as follows:

"CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS".

(2) The table of contents for the Trade Act of 1974 is amended—

(A) by striking out the item relating to chapter 8 of title I and inserting in lieu thereof the following:

"CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE PRACTICES",

and

(B) by inserting after the item relating to section 181 the following new item:

"Sec. 182. Identification of countries that deny adequate protection, or market access, for intellectual property rights.".

SEC. 1304. AMENDMENTS TO THE NATIONAL TRADE ESTIMATES.

(a) IN GENERAL.—Section 181 of the Trade Act of 1974 (19 U.S.C. 2241) is amended—

(1) by striking out "Not later than the date on which the initial report is required under subsection (b)(1)," in subsection (a)(1) and inserting in lieu thereof "For calendar year 1988, and for each succeeding calendar year,",

(2) by inserting "of each foreign country" after "or practices" in subsection (a)(1)(A),

(3) by striking out "and" at the end of subsection (a)(1)(A)(ii),

(4) by striking out the period at the end of subsection (a)(1)(B) and inserting in lieu thereof "; and",

(5) by adding at the end of subsection (a)(1) the following new subparagraph:

"(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.",

(6) by striking out "and" at the end of subsection (a)(2)(C),

(7) by striking out the period at the end of subsection (a)(2)(D) and inserting in lieu thereof "; and",

(8) by adding at the end of subsection (a)(2) the following new subparagraph:

"(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.",

(9) by inserting "and with the assistance of the interagency advisory committee established under section 141(d)(2)," after "Trade Expansion Act of 1962," in subsection (a)(1), and

(10) by striking out "ACTIONS CONCERNING" in the section heading and inserting in lieu thereof "ESTIMATES OF".

(b) SUBMISSION OF REPORT.—Paragraph (1) of section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)(1)) is amended to read as follows:

"(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.".

SEC. 1305. INVESTIGATION OF BARRIERS IN JAPAN TO CERTAIN UNITED STATES SERVICES.

The United States Trade Representative shall, within 90 days after the date of enactment of this Act, initiate an investigation under section 302 of the Trade Act of 1974 regarding those acts, policies, and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance by United States persons of architectural, engineering, construction, and consulting services in Japan.

SEC. 1306. TRADE AND ECONOMIC RELATIONS WITH JAPAN.

(a) FINDINGS.—The Congress finds that—

(1) the United States is at a critical juncture in bilateral relations with Japan;

(2) the balance of trade between the United States and Japan has deteriorated steadily from an already large United States deficit of $10,400,000,000 in 1980 to an unprecedented United States deficit of $57,700,000,000 in 1987, a magnitude that is simply untenable;

(3) approximately 90 percent of the increase in total trade between the United States and Japan since 1980 has been in Japanese exports to the United States;

(4) United States exports to Japan have not significantly benefited from appreciation of the yen;

(5) the United States deficit in the balance of trade in manufactured goods is growing: in 1987 Japan exported $82,500,000,000 of manufactured goods to the United States, while the United States exported $14,600,000,000 in manufactured goods;

(6) Japan accounts for 49 percent of the worldwide deficit of the United States in the balance of trade in manufactured goods, calculated on a customs basis;

(7) our trade and economic relations with Japan are complex and cannot be effectively resolved through narrow sector-by-sector negotiations;

(8) a major problem between the United States and Japan is the absence of a political will in Japan to import; and

(9) meaningful negotiations must take place at the highest level, at a special summit of political leaders from both countries.

(b) SENSE OF THE CONGRESS.—

(1) It is the sense of the Congress that the President should propose to the Japanese Prime Minister that a special summit be held between the leaders of the United States and Japan for the purpose of—

(A) addressing trade and economic issues, and

(B) establishing—

(i) an agreement that provides objectives for improvement in trade and economic relations, and

(ii) targets for achieving these objectives.

(2) The delegation of the United States to the summit meeting described in subsection (a) should include—

(A) Members of Congress from both political parties, and

(B) appropriate officers of the Executive Branch of the United States Government.

(3) The delegation of Japan to the summit meeting described in subsection (a) should include—

(A) representatives of all political parties in Japan, and

(B) appropriate officers of the Government of Japan.

SEC. 1307. SUPERCOMPUTER TRADE DISPUTE.

(a) FINDINGS.—The Congress finds that—

(1) United States manufacturers of supercomputers have encountered significant obstacles in selling supercomputers in Japan, particularly to government agencies and universities;

(2) Japanese government procurement policies and pricing practices have denied United States manufacturers access to the Japanese supercomputer market;

(3) it has been reported that officials of the Ministry of International Trade and Industry of Japan have told United States Government officials that Japanese government agencies and universities do not intend to purchase supercomputers from United States manufacturers, or take steps to improve access for United States manufacturers;

(4) the United States Government in August 1987 signed an agreement with the Government of Japan establishing procedures for the procurement of United States supercomputers by the Government of Japan;

(5) concern remains as to implementation of the procurement agreement by the Government of Japan;

(6) there have been allegations that Japanese manufacturers of supercomputers have been offering supercomputers at drastically discounted prices in the markets of the United States, Japan, and other countries;

(7) deep price discounting raises the concern that Japan's large-scale vertically integrated manufacturers of supercomputers have targeted the supercomputer industry with the objective of eventual domination of the global computer market; and

(8) the supercomputer industry plays a central role in the technological competitiveness and national security of the United States.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the United States Trade Representative and other appropriate officials of the United States Government should—

(1) give the highest priority to concluding and enforcing agreements with the Government of Japan which achieve improved market access for United States manufacturers of supercomputers and end any predatory pricing activities of Japanese companies in the United States, Japan, and other countries; and

(2) continue to monitor the efforts of United States manufacturers of supercomputers to gain access to the Japanese market, recognizing that the Government of Japan may continue to manipulate the government procurement process to maintain the market dominance of Japanese manufacturers.

PART 2—IMPROVEMENT IN THE ENFORCEMENT OF THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

SEC. 1311. REFERENCE TO TITLE VII OF THE TARIFF ACT OF 1930.

Unless otherwise provided, whenever in this part an amendment or repeal is expressed in terms of an amendment to, or repeal of, a subtitle, section, subsection, or other provision, the reference shall be considered to be made to a subtitle, section, subsection, or other provision of title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

SEC. 1312. ACTIONABLE DOMESTIC SUBSIDIES.

Paragraph (5) of section 771 (19 U.S.C. 1677(5)) is amended to read as follows:

"(5) SUBSIDY.—

"(A) IN GENERAL.—The term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 303, and includes, but is not limited to, the following:

"(i) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

"(ii) The following domestic subsidies, if provided or required by government action

to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

"(I) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

"(II) The provision of goods or services at preferential rates.

"(III) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

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

"(B) SPECIAL RULE.—In applying subparagraph (A), the administering authority, in each investigation, shall determine whether the bounty, grant, or 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 bounty, grant, or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.".

SEC. 1313. CALCULATION OF SUBSIDIES ON CERTAIN PROCESSED AGRICULTURAL PRODUCTS.

(a) IN GENERAL.—Title VII of the Tariff Act of 1930 is amended by inserting after section 771A (19 U.S.C. 1677-1) the following new section:

"SEC. 771B. In the case of an agricultural product processed from a raw agricultural product in which (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and (2) 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.".

(b) CONFORMING AMENDMENT.—The table of contents for title VII of the Tariff Act of 1930 is amended by inserting after the item relating to section 771A the following:

"Sec. 771B. Calculation of subsidies on certain processed agricultural products.".

SEC. 1314. REVOCATION OF STATUS AS A COUNTRY UNDER THE AGREEMENT.

Section 701 (19 U.S.C. 1671) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) REVOCATION OF STATUS AS A COUNTRY UNDER THE AGREEMENT.—The United States Trade Representative may revoke the status of a foreign country as a country under the Agreement for purposes of this subtitle 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 subtitle, or

"(2) does not in fact honor such obligations.".

SEC. 1315. TREATMENT OF INTERNATIONAL CONSORTIA.

Section 701 (19 U.S.C. 1671) (as amended by section 1314) is further amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d) TREATMENT OF INTERNATIONAL CONSORTIA.—

For purposes of this subtitle, 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 the administering authority shall cumulate all such subsidies, as well as subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.".

SEC. 1316. DUMPING BY NONMARKET ECONOMY COUNTRIES.

(a) IN GENERAL.—Subsection (c) of section 773 (19 U.S.C. 1677b) is amended to read as follows:

"(c) NONMARKET ECONOMY COUNTRIES.—

"(1) IN GENERAL.—If—

"(A) the merchandise under investigation is exported from a nonmarket economy country, and

"(B) the administering authority finds that available information does not permit the foreign market value of the merchandise to be determined under subsection (a),

the administering authority 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 subsection (e). Except as provided in paragraph (2), 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 the administering authority.

"(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining the foreign market value of merchandise under paragraph (1), the administering authority shall determine the foreign market value on the basis of the price at which merchandise that is—

"(A) comparable to the merchandise under investigation, and

"(B) 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.

"(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—

"(A) hours of labor required,

"(B) quantities of raw materials employed,

"(C) amounts of energy and other utilities consumed, and

"(D) representative capital cost, including depreciation.

"(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

"(A) at a level of economic development comparable to that of the nonmarket economy country, and

"(B) significant producers of comparable merchandise.".

(b) NONMARKET ECONOMY COUNTRY DEFINED.—Section 771 (19 U.S.C. 1677) is amended by adding at the end thereof the following new paragraph:

"(18) NONMARKET ECONOMY COUNTRY.—

"(A) IN GENERAL.—The term 'nonmarket economy country' means any foreign country that the administering authority 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.

"(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority 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 the administering authority considers appropriate.

"(C) DETERMINATION IN EFFECT.—

"(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

"(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

"(D) DETERMINATIONS NOT IN ISSUE.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle B.

"(E) COLLECTION OF INFORMATION.—Upon request by the administering authority, the Commissioner of Customs shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 777.".

(c) SUSPENSION OF NONMARKET ECONOMY COUNTRY INVESTIGATIONS.—Section 734 (19 U.S.C. 1673c) is amended by adding at the end thereof the following new subsection:

"(l) SPECIAL RULE FOR NONMARKET ECONOMY COUNTRIES.—

"(1) IN GENERAL.—The administering authority may suspend an investigation under this subtitle 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 the administering authority determines that—

"(A) such agreement satisfies the requirements of subsection (d), 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 the administering authority 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 (i) shall apply.".

SEC. 1317. THIRD-COUNTRY DUMPING.

(a) DEFINITIONS.—For purposes of this section:

(1) The term "Agreement" 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.

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

(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) 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 paragraph (1), 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 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), the Trade Representative shall seek consultations with the appropriate authority of the Agreement 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), the Trade Representative shall promptly consult with the domestic industry on whether action under any other law of the United States is appropriate.

SEC. 1318. INPUT DUMPING BY RELATED PARTIES.

Subsection (e) of section 773 (19 U.S.C. 1677b(e)) is amended—

(1) by striking out "(3)" each place it appears in paragraph (2) and inserting "(4)",

(2) by redesignating paragraph (3) as paragraph (4),

(3) by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULE.—If, regarding any transaction between persons specified in any one of the subparagraphs of paragraph (4) involving the production by one of such persons of a major input to the merchandise under consideration, the administering authority 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 the administering authority 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 paragraph (2).", and

(4) by striking out "paragraph (2)" in paragraph (4) (as redesignated by paragraph (2)) and inserting "paragraphs (2) and (3)".

SEC. 1319. FICTITIOUS MARKETS.

Subsection (a) of section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b(a)) is amended by adding at the end thereof the following new paragraph:

"(5) 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 title 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 the administering authority 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.".

SEC. 1320. DOWNSTREAM PRODUCT MONITORING.

(a) IN GENERAL.—Subtitle D (19 U.S.C. 1677 et seq.) is amended by adding at the end thereof the following:

"SEC. 780. 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 the administering authority to designate a downstream product for monitoring under subsection (b). 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), the administering authority 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 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303, 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 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303.

"(3) FACTORS TO TAKE INTO ACCOUNT.—In making a determination under paragraph (2)(A), the administering authority 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.—The administering authority 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 subparagraph 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 the administering authority 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) and a determination made under any clause of subsection (a)(2)(B) 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). 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 the administering authority 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.—The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) and shall—

"(1) consider the information in determining whether to initiate an investigation under section 702(a), 732(a), or 303 regarding any downstream product, and

"(2) 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 title or section 303 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 704, 734, or 303 after a preliminary affirmative determination under section 703(b), 733(b)(1), or 303 was made by the administering authority 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.".

(b) CONFORMING AMENDMENT.—The table of contents for title VII of the Tariff Act of 1930 is amended by inserting after the item relating to section 779 the following:

"Sec. 780. Downstream product monitoring.".

SEC. 1321. PREVENTION OF CIRCUMVENTION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) IN GENERAL.—Subtitle D (19 U.S.C. 1677 et seq.) (as amended by section 1320) is further amended by adding at the end thereof the following:

"SEC. 781. PREVENTION OF CIRCUMVENTION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

"(a) MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.—

"(1) IN GENERAL.—If—

"(A) 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 duty order issued under section 736,

"(ii) a finding issued under the Antidumping Act, 1921, or

"(iii) a countervailing duty order issued under section 706 or section 303,

"(B) 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

"(C) 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 subparagraph (B) is small,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) 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.

"(2) FACTORS TO CONSIDER.—In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

"(A) the pattern of trade,

"(B) 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 paragraph (1) applies, and

"(C) 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.

"(b) MERCHANDISE COMPLETED OR ASSEMBLED IN OTHER FOREIGN COUNTRIES.—

"(1) IN GENERAL.—If—

"(A) 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 duty order issued under section 736,

"(ii) a finding issued under the Antidumping Act, 1921, or

"(iii) a countervailing duty order issued under section 706 or section 303,

"(B) 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,

"(C) the difference between the value of such imported merchandise and the value of the merchandise described in subparagraph (B) is small, and

"(D) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

"(2) 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 paragraph (1), the administering authority shall take into account such factors as—

"(A) the pattern of trade,

"(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is related to the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

"(C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the issuance of such order or finding.

"(c) MINOR ALTERATIONS OF MERCHANDISE.—

"(1) IN GENERAL.—The class or kind of merchandise subject to—

"(A) an investigation under this title,

"(B) an antidumping duty order issued under section 736,

"(C) a finding issued under the Antidumping Act, 1921, or

"(D) a countervailing duty order issued under section 706 or section 303,

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.

"(2) EXCEPTION.—Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

"(d) LATER-DEVELOPED MERCHANDISE.—

"(1) IN GENERAL.—For purposes of determining whether merchandise developed after an investigation is initiated under this title or section 303 (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 title or section 303 as a result of such investigation, the administering authority shall consider whether—

"(A) 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'),

"(B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product,

"(C) the ultimate use of the earlier product and the later-developed merchandise are the same,

"(D) the later-developed merchandise is sold through the same channels of trade as the earlier product, and

"(E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The administering authority shall take into account any advice provided by the Commission under subsection (e) before making a determination under this subparagraph.

"(2) EXCLUSION FROM ORDERS.—The administering authority may not exclude a later-developed merchandise from a countervailing or antidumping duty order merely because the merchandise—

"(A) is classified under a tariff classification other than that identified in the petition or the administering authority's prior notices during the proceeding, or

"(B) 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.

"(e) COMMISSION ADVICE.—

"(1) NOTIFICATION TO COMMISSION OF PROPOSED ACTION.—Before making a determination—

"(A) under subsection (a) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),

"(B) under subsection (b) with respect to merchandise completed or assembled in other foreign countries, or

"(C) under subsection (d) 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, the administering authority 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 the administering authority regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

"(2) REQUEST FOR CONSULTATION.—After receiving notice under paragraph (1), the Commission may request consultations with the administering authority regarding the inclusion. Upon the request of the Commission, the administering authority shall consult with the Commission and any such consultation shall be completed within 15 days after the date of the request.

"(3) COMMISSION ADVICE.—If the Commission believes, after consultation under paragraph (2), that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the administering authority 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 the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). 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.".

(b) CONFORMING AMENDMENT.—The table of contents for title VII of the Tariff Act of 1930 is amended by inserting after the item relating to section 780 the following:

"Sec. 781. Prevention of Circumvention of Antidumping and Countervailing Duty Orders.".

SEC. 1322. STEEL IMPORTS.

Section 805 of the Trade and Tariff Act of 1984 (19 U.S.C. 2253, note) is amended by adding at the end thereof the following new subsection:

"(d)(1) Any steel product that is manufactured in a country that is not party to a bilateral arrangement from steel which was melted and poured in a country that is party to a bilateral arrangement (hereafter in this subsection referred to as an 'arrangement country') may be treated for purposes of the quantitative restrictions and related terms under that arrangement as if it were a product of the arrangement country.

"(2) The President may implement such procedures as may be necessary or appropriate to carry out the purpose of paragraph (1).

"(3) The United States Trade Representative may, in a manner consistent with the purpose of any so-called 'third country equity provision' of an arrangement entered into under the President's Steel Policy, take such actions as he deems necessary with respect to steel imports of any other country or countries so as to ensure the effectiveness of any portion of such arrangement.".

SEC. 1323. SHORT LIFE CYCLE PRODUCTS.

(a) ESTABLISHMENT OF PRODUCT CATEGORIES FOR SHORT LIFE CYCLE MERCHANDISE.—Subtitle B is amended by adding at the end thereof the following new section:

"SEC. 739. ESTABLISHMENT OF PRODUCT CATEGORIES FOR SHORT LIFE CYCLE MERCHANDISE.

"(a) ESTABLISHMENT OF PRODUCT CATEGORIES.—

"(1) PETITIONS.—

"(A) 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.

"(B) CONTENTS.—A petition filed under subparagraph (A) 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 clauses (ii) and (iii), and

"(v) identify such merchandise in terms of the designations used in the Tariff Schedules of the United States.

"(2) DETERMINATIONS ON SUFFICIENCY OF PETITION.—Upon receiving a petition under paragraph (1), the Commission shall—

"(A) request the administering authority to confirm promptly the affirmative determinations on which the petition is based, and

"(B) 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.

"(3) NOTICE; HEARINGS.—If the determinations under paragraph (2)(B) are affirmative, the Commission shall—

"(A) publish notice in the Federal Register that the petition has been received, and

"(B) 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.

"(4) DETERMINATIONS.—

"(A) IN GENERAL.—By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), 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.

"(B) 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 subparagraph (A) at any time.

"(ii) NOTICE AND HEARING.—Determinations may be made under clause (i) only after the Commission has—

"(I) published in the Federal Register notice of the proposed modification, and

"(II) 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

"(C) BASIS OF DETERMINATIONS.—In making determinations under subparagraph (A) or (B), 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.

"(b) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE DOMESTIC ENTITY.—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.

"(2) AFFIRMATIVE DUMPING DETERMINATION.—The term 'affirmative dumping determination' means—

"(A) any affirmative final determination made by the administering authority under section 735(a) 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 736 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 the administering authority under section 733(b) 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 735 by reason of a suspension of the investigation under section 734, 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.

"(3) SUBJECT OF AFFIRMATIVE DUMPING DETERMINATION.—

"(A) IN GENERAL.—Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if the administering authority—

"(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 the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) 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.

"(4) SHORT LIFE CYCLE MERCHANDISE.—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 or style that is no longer state-of-the-art.

"(c) TRANSITIONAL RULES.—

"(1) For purposes of this section and section 733 (b)(1)(B) and (C), all affirmative dumping determinations described in subsection (b)(2)(A) that were made after December 31, 1980, and before the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, and all affirmative dumping determinations described in subsection (b)(2)(B) that were made after December 31, 1984, and before the date of enactment of such Act, 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.

"(2) No affirmative dumping determination that—

"(A) is described in subsection (b)(2)(A) and was made before January 1, 1981, or

"(B) is described in subsection (b)(2)(B) and was made before January 1, 1985,

may be taken into account under this section or section 733(b)(1)(B) and (C).".

(b) EXPEDITED DUMPING INVESTIGATIONS.—Section 733 (19 U.S.C. 1673) is amended as follows:

(1) Paragraph (1) of subsection (b)(1) is amended to read as follows:

"(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), within 160 days after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.

"(B) IF CERTAIN SHORT LIFE CYCLE MERCHANDISE INVOLVED.—If a petition filed under section 732(b), or an investigation commenced under section 732(a), concerns short life cycle merchandise that is included in a product category established under section 739(a), subparagraph (A) shall be applied—

"(i) by substituting "120 days" for "160 days" if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

"(ii) by substituting "100 days" for "160 days" if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

"(C) DEFINITIONS OF OFFENDERS.—For purposes of subparagraph (B)—

"(i) The term 'second offender' means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 739) 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 subparagraph (B).

"(ii) The term 'multiple offender' means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 739) 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 subparagraph (B).".

(2) Paragraph (1) of subsection (c) is amended by inserting at the end thereof the following sentence: "No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) applies unless the petitioner submits written notice to the administering authority of its consent to the extension.".

(3) Subsection (e)(1) is amended by adding at the end thereof the following flush sentence:

"The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) is applied.".

(c) CONFORMING AMENDMENT.—The table of contents for title VII of the Tariff Act of 1930 is amended by inserting after the item relating to section 739 the following:

"Sec. 739. Establishment of product categories for short life cycle merchandise.".

SEC. 1324. CRITICAL CIRCUMSTANCES.

(a) COUNTERVAILING DUTY INVESTIGATIONS.—

(1) Section 702 (19 U.S.C. 1671a) is amended by adding at the end thereof the following new subsection:

"(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that the alleged subsidy is inconsistent with the Agreement, the administering authority 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 the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 705(a), the investigation is terminated, or the administering authority withdraws the request.".

(2) Paragraph (1) of section 703(e) (19 U.S.C. 1671b(e)(1)) is amended by inserting "(at any time after the initiation of the investigation under this subtitle)" after "promptly".

(3) Subparagraph (A) of section 705(b)(4) (19 U.S.C. 1671d(b)(4)(A)) is amended to read as follows:

"(A) RETROACTIVE APPLICATION.—

"(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether retroactive imposition of a 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 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 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 countervailing duty order under this subtitle.".

(b) ANTIDUMPING DUTY INVESTIGATIONS.—

(1) Section 732 (19 U.S.C. 1673a) is amended by adding at the end thereof the following new subsection:

"(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that—

"(1) 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

"(2) 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,

the administering authority 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 the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 735(a), the investigation is terminated, or the administering authority withdraws the request.".

(2) Paragraph (1) of section 733(e) (19 U.S.C. 1673b(e)(1)) is amended by inserting "(at any time after the initiation of the investigation under this subtitle)" after "promptly".

(3) Subparagraph (A) of section 735(b)(4) (19 U.S.C. 1673d(b)(4)(A)) is amended to read as follows:

"(A) RETROACTIVE APPLICATION.—

"(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(3) is affirmative, then the final determination of the Commission shall include a finding as to whether retroactive imposition of antidumping duties 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.

"(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 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 in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping 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 duty order under this subtitle.".

SEC. 1325. EXPEDITED REVIEW AUTHORITY.

(a) IN GENERAL.—Paragraph (1) of section 736(c) (19 U.S.C. 1673e(c)(1)) is amended to read as follows:

"(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if—

"(A) 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

"(iii) the number of firms whose activities must be investigated,

"(B) the final determination in the investigation has not been postponed under section 735(a)(2)(A);

"(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a), 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 the administering authority under section 733(b), or

"(ii) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b);

"(D) the party described in subparagraph (C) 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); and

"(E) 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) BUSINESS PROPRIETARY INFORMATION.—Subsection (c) of section 736 (19 U.S.C. 1673e(c)) is amended by adding at the end thereof the following new paragraph:

"(4) PROVISION OF BUSINESS PROPRIETARY INFORMATION; WRITTEN COMMENTS.—Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

"(A) make all business proprietary information supplied to the administering authority under paragraph (1) available under a protective order in accordance with section 777(c) to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 771(9), and

"(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.".

SEC. 1326. PROCESSED AGRICULTURAL PRODUCTS.

(a) DEFINITION OF INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.—Paragraph (4) of section 771 (19 U.S.C. 1677(4)) is amended by adding at the end thereof the following new subparagraph:

"(E) INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.—

"(i) IN GENERAL.—Subject to clause (v), 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).

"(ii) 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.

"(iii) RELEVANT ECONOMIC FACTORS.—For purposes of clause (i)(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.

"(iv) RAW AGRICULTURAL PRODUCT.—For purposes of this subparagraph, the term 'raw agricultural product' means any farm or fishery product.

"(v) TERMINATION OF THIS SUBPARAGRAPH.—This subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.".

(b) THREAT OF MATERIAL INJURY.—Section 771(7)(F) (19 U.S.C. 1677(7)(F)) is amended—

(1) by striking out "and" at the end of subclause (VII);

(2) by striking out the period at the end of subclause (VIII) and inserting ", and"; and

(3) by adding at the end thereof the following:

"(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) 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 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both).".

(c) INTERESTED PARTIES.—Section 771(9) (19 U.S.C. 1677(9)) is amended—

(1) by striking out "and" at the end of subparagraph (E);

(2) by striking out the period at the end of subparagraph (F) and inserting in lieu thereof ", and"; and

(3) by adding at the end thereof the following new subparagraph:

"(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

"(i) processors,

"(ii) processors and producers, or

"(iii) processors and growers,

but this subpararaph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.".

(d) CONFORMING AMENDMENTS.—

(1) Title VII of the Tariff Act of 1930 is amended by striking out "subparagraph (C), (D), (E), or (F) of section 771(9)" each place it appears and inserting in lieu thereof "subparagraph (C), (D), (E), (F), or (G) of section 771(9)".

(2) Title VII of the Tariff Act of 1930 is amended by striking out "subparagraph (C), (D), (E), and (F) of section 771(9)" each place it appears and inserting in lieu thereof "subparagraph (C), (D), (E), (F), or (G) of section 771(9)".

(3) Subsection (a) of section 516 of the Tariff Act of 1930 (19 U.S.C. 1516(a)) is amended by adding at the end thereof the following new paragraph:

"(3) Any producer of a raw agricultural product who is considered under section 771(4)(E) to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an interested party producing such processed agricultural product.".

SEC. 1327. LEASES EQUIVALENT TO SALES.

Section 771 (19 U.S.C. 1677) is amended by adding at the end thereof the following new paragraph:

"(19) EQUIVALENCY OF LEASES TO SALES.—In determining whether a lease is equivalent to a sale for purposes of this title, the administering authority 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.".

SEC. 1328. MATERIAL INJURY.

Section 771(7) (19 U.S.C. 1677(7)) is amended—

(1) by amending subparagraph (B) to read as follows:

"(B) VOLUME AND CONSEQUENT IMPACT.—In making determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission, in each case—

"(i) 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

"(ii) 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 705(d) or 735(d), as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination."; and

(2) by amending subparagraph (C)—

(A) by amending the heading to read as follows:

"(C) EVALUATION OF RELEVANT FACTORS.—",

(B) by striking out "price undercutting" in clause (ii) and inserting "price underselling", and

(C) by amending clause (iii) to read as follows:

"(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(iii), 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.".

SEC. 1329. THREAT OF MATERIAL INJURY.

Subparagraph (F) of section 771(7) (19 U.S.C. 1677(7)(F)) (as amended by section 1326) is further amended—

(1) by striking out "and" at the end of clause (i)(VIII),

(2) by striking out the period at the end of clause (i)(IX),

(3) by adding at the end of clause (i) the following new subclause:

"(X) 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.", and

(4) by adding at the end thereof the following:

"(iii) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—

"(I) IN GENERAL.—In investigations under subtitle B, 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.

"(II) 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).

"(III) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities shall be treated as a foreign country.".

SEC. 1330. CUMULATION.

(a) THREAT OF INJURY.—Subparagraph (F) of section 771(7) (19 U.S.C. 1677(7)(F)) (as amended by section 1329) is further amended by adding at the end thereof the following new clause:

"(iv) CUMULATION.—To the extent practicable and subject to subparagraph (C)(v), for purposes of clause (i) (III) and (IV) the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports—

"(I) compete with each other, and with like products of the domestic industry, in the United States market, and

"(II) are subject to any investigation under section 303, 701, or 731.".

(b) TREATMENT OF NEGLIGIBLE IMPORTS.—Subparagraph (C) of section 771(7) (19 U.S.C. 1677(7)(C)) is amended by adding at the end thereof the following new clause:

"(v) TREATMENT OF NEGLIGIBLE IMPORTS.—The Commission is not required to apply clause (iv) or subparagraph (F)(iv) 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—

"(I) the volume and market share of the imports are negligible,

"(II) sales transactions involving the imports are isolated and sporadic, and

"(III) the domestic market for the like product 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.".

SEC. 1331. CERTIFICATION OF SUBMISSIONS.

Section 776 (19 U.S.C. 1677e) is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively,

(2) by amending the heading to subsection (b) (as so redesignated) to read as follows: "(b) VERIFICATION.—", and

(3) by inserting before such subsection (b) the following:

"(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title 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.".

SEC. 1332. ACCESS TO INFORMATION.

Section 777 (19 U.S.C. 1677f) is amended—

(1) by amending subsection (b)(1)(B)(ii) to read as follows:

"(ii) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.";

(2) by amending subsection (c)(1)—

(A) by amending subparagraph (A) to read as follows:

"(A) 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, the administering authority 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 subparagraph (B), regardless of when the information is submitted during a proceeding."; and

(B) by adding at the end thereof the following new subparagraphs:

"(C) TIME LIMITATION ON DETERMINATIONS.—The administering authority 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 703(a) or 733(a)) after the date on which the information is submitted, or

"(ii) if—

"(I) the person that submitted the information raises objection to its release, or

"(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 703(a) or 733(a)) after the date on which the information is submitted.

"(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

"(i) the business proprietary information submitted to the administering authority 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 the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

"(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.";

(3) by striking out "or the Commission denies a request for proprietary information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product," in subsection (c)(2); and

(4) by adding at the end thereof the following new subsections:

"(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority 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. The administering authority 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.

"(e) TIMELY SUBMISSIONS.—Information shall be submitted to the administering authority 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 the administering authority or the Commission shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, the administering authority or the Commission may return the information to the party submitting it and not consider it.".

SEC. 1333. CORRECTION OF MINISTERIAL ERRORS.

(a) FINAL DETERMINATIONS.—Sections 705 and 735 (19 U.S.C. 1671d and 1673d) are each amended by adding at the end thereof the following new subsection:

"(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority 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 the administering authority considers ministerial.".

(b) ADMINISTRATIVE REVIEW.—Section 751 (19 U.S.C. 1675) is amended by adding at the end thereof the following new subsection:

"(f) CORRECTION OF MINISTERIAL ERRORS.—The administering authority 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 the administering authority considers ministerial.".

SEC. 1334. DRAWBACK TREATMENT.

(a) IN GENERAL.—Section 779 (19 U.S.C. 1677h) is amended by striking out "shall be treated as any other customs duties." and inserting "shall not be treated as being regular customs duties.".

(b) CONFORMING AMENDMENTS—

(1) The section heading for such section 779 is amended by striking out "**DRAWBACKS**" and inserting "**DRAWBACK TREATMENT**".

(2) The table of contents for title VII of the Tariff Act of 1930 is amended by striking out "Drawbacks." in the entry for section 779 and inserting "Drawback treatment.".

SEC. 1335. GOVERNMENTAL IMPORTATIONS.

Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) (as amended by section 1316(b)) is amended by adding at the end thereof the following new paragraph:

"(19) APPLICATION TO GOVERNMENTAL IMPORTATIONS.—

"(A) 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 schedule 8 of the Tariff Schedules of the United States) is subject to the imposition of countervailing duties or antidumping duties under this title or section 303.

"(B) 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 title if—

"(i) 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 superceding agreements, and

"(II) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

"(ii) the merchandise has no substantial nonmilitary use.".

SEC. 1336. STUDIES.

(a) STUDY OF MARKET ORIENTATION OF CHINA.—The Secretary of Commerce, in consultation with the heads of other appropriate Federal agencies, shall undertake a study regarding the new market orientation of the People's Republic of China. The study shall address, but not be limited to—

(1) the effect of the new orientation on Chinese market policies and price structure, and the relationship between domestic Chinese prices and world prices;

(2) the extent to which United States trade law practices can accommodate the increased market orientation of the Chinese economy; and

(3) the possible need for changes in United States antidumping laws as they apply to foreign countries, such as China, which are in transition to a more market-oriented economy.

The Secretary of Commerce shall submit to the Congress within 1 year after the date of the enactment of this Act a report on the study required under this subsection.

(b) SUBSIDIES CODE COMMITMENTS.—Within 90 days after the date of the enactment of this Act, the United States Trade Representative shall initiate a review of all bilateral subsidy commitments that have been entered into by foreign governments with the United States. The review shall include—

(1) an evaluation of the extent to which the commitments have been complied with;

(2) with respect to those commitments found under paragraph (1) not to have been complied with, an estimate regarding when compliance is likely; and

(3) recommendations regarding how compliance can be improved.

The United States Trade Representative shall complete the review required under this subsection and submit a report thereon to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate within 180 days after the date of the enactment of this Act.

SEC. 1337. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this part shall take effect on the date of enactment of this Act.

(b) INVESTIGATIONS AND REVIEWS AFTER ENACTMENT.—The amendments made by sections 1312, 1315, 1316, 1318, 1325, 1326, 1327, 1328, 1329, 1331, and 1332 shall only apply with respect to—

(1) investigations initiated after the date of enactment of this Act, and

(2) reviews initiated under section 736(c) or 751 of the Tariff Act of 1930 after the date of enactment of this Act.

(c) INVESTIGATIONS AFTER ENACTMENT.—The amendments made by sections 1324 and 1330 shall only apply with respect to investigations initiated after the date of enactment of this Act.

(d) PREVENTION OF CIRCUMVENTION OF DUTIES; DRAWBACK.—The provisions of section 781 of the Tariff Act of 1930, as added by section 1321(a), and the amendments made by section 1334 shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of enactment of this Act.

(e) GOVERNMENTAL IMPORTATIONS; STEEL.—The amendments made by sections 1321(b) and 1335 shall apply with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after the date of enactment of this Act.

(f) FICTITIOUS MARKETS.—The amendment made by section 1319 shall only apply with respect to—

(1) reviews initiated under section 736(c) or 751 of the Tariff Act of 1930 after the date of enactment of this Act, and

(2) reviews initiated under such sections—

(A) which are pending on the date of enactment of this Act, and

(B) in which a request for revocation is pending on the date of enactment of this Act.

PART 3—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

SEC. 1341. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) United States persons that rely on protection of intellectual property rights are among the most advanced and competitive in the world; and

(2) the existing protection under section 337 of the Tariff Act of 1930 against unfair

trade practices is cumbersome and costly and has not provided United States owners of intellectual property rights with adequate protection against foreign companies violating such rights.

(b) PURPOSE.—The purpose of this part is to amend section 337 of the Tariff Act of 1930 to make it a more effective remedy for the protection of United States intellectual property rights.

SEC. 1342. PROTECTION UNDER THE TARIFF ACT OF 1930.

(a) IN GENERAL.—Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) Subject to paragraph (2), the following 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 for in subparagraphs (B), (C), and (D)) into the United States, or in the sale of such articles by the owner, importer, or consignee, 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 by the owner, importer, or consignee, of articles that—

"(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17, United States Code; or

"(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

"(C) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946.

"(D) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

"(2) Subparagraphs (B), (C), and (D) of paragraph (1) apply 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.".

(2) Subsection (c) is amended by inserting before the period in the first sentence the following: ", 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".

(3) Subsection (e) is amended—

(A) by striking out "If" in the first sentence and inserting "(1) If"; and

(B) by adding at the end thereof the following new paragraphs:

"(2) A complainant may petition the Commission for the issuance of an order under 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 it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. 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 or subsection (f) to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.".

(4) Subsection (f) is amended—

(A) by striking out "In lieu of" in paragraph (1) and inserting "In addition to, or in lieu of,"; and

(B) by striking out "$10,000 or" in paragraph (2) and inserting "$100,000 or twice".

(5) Such section is further amended—

(A) by redesignating subsections (g), (h), (i), and (j) as subsections (j), (k), (l), and (m), respectively; and

(B) by inserting after subsection (f) the following new subsections:

"(g)(1) If—

"(A) a complaint is filed against a person under this section;

"(B) the complaint and a notice of investigation are served on the person;

"(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

"(D) the person fails to show good cause why the person should not be found in default; and

"(E) 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 unless, after considering the effect of such exclusion or 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 such exclusion or order should not be issued.

"(2) 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—

"(A) no person appears to contest an investigation concerning a violation of the provisions of this section, and

"(B) such a violation is established by substantial, reliable, and probative evidence.

"(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.

"(i) FORFEITURE.—

"(1) In addition to taking action under subsection (d), 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—

"(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 (d); 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 this subsection and, upon receipt of 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 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)(C).

"(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 (d); and

"(B) a copy of such written notice to the Commission.".

(6) Subsection (k) (as redesignated by paragraph (5)(B) of this section) is amended—

(A) by inserting "(1)" before the first sentence; and

(B) by adding at the end the following:

"(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 (d), (e), (f), (g), or (i)—

"(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 judgment or order under the Federal Rules of Civil Procedure.".

(7) Subsection (l) (as redesignated by paragraph (5)(B) of this section) is amended—

(A) by striking out "claims of United States letters patent" in the first sentence and inserting "a proceeding involving a patent, copyright, or mask work under subsection (a)(1)"; and

(B) by striking out "a patent owner" in the second sentence and inserting "an owner of the patent, copyright, or mask work".

(8) Such section is further amended by adding at the end the following:

"(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 (h), 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.".

(b) TECHNICAL AMENDMENTS.—Section 337 (as amended by subsection (a)) is further amended—

(1) by amending subsection (b)—

(A) by striking out "Department of Health, Education, and Welfare" in paragraph (2) and inserting "Department of Health and Human Services; and

(B) by striking out "Secretary of the Treasury" in paragraph (3) and inserting "Secretary of Commerce".

(2) by amending subsection (c)—

(A) by striking out "or (f)" and inserting "(f), or (g)", and

(B) by striking out "and (f)" and inserting "(f), and (g)";

(3) by striking out "or (f)" each place it appears in subsection (j) and inserting "(f), (g), or (i)";

(4) by striking out "(g)" in subsection (k) and inserting "(j)"; and

(5) by striking out "or (f)" in subsection (l) and inserting "(f), (g), or (i)".

(c) CONFORMING AMENDMENT.—The Act entitled "An Act to limit the importation of products made, produced, processed, or mined under process covered by unexpired valid United States patents, and for other purposes", approved July 2, 1940 (54 Stat. 724, 19 U.S.C. 1337a), is repealed.

(d) EFFECTIVE DATE.—

(1)(A) Subject to subparagraph (B), the amendments made by this section shall take effect on the date of the enactment of this Act.

(B) The United States International Trade Commission is not required to apply the provision in section 337(e)(2) of the Tariff Act of 1930 (as amended by subsection (a)(3) of this section) relating to the posting of bonds until the earlier of—

(i) the 90th day after such date of enactment; or

(ii) the day on which the Commission issues interim regulations setting forth the procedures relating to such posting.

(2) Notwithstanding any provision of section 337 of the Tariff Act of 1930, the United States International Trade Commission may extend, by not more than 90 days, the period within which the Commission is required to make a determination in an investigation conducted under such section 337 if—

(A) the Commission would, but for this paragraph, be required to make such determination before the 180th day after the date of enactment of this Act; and

(B) the Commission finds that the investigation is complicated.

PART 4—TELECOMMUNICATIONS TRADE

SEC. 1371. SHORT TITLE.

This part may be cited as the "Telecommunications Trade Act of 1988".

SEC. 1372. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) rapid growth in the world market for telecommunications products and services is likely to continue for several decades;

(2) the United States can improve prospects for—

(A) the growth of—

(i) United States exports of telecommunications products and services, and

(ii) export-related employment and consumer services in the United States, and

(B) the continuance of the technological leadership of the United States,

by undertaking a program to achieve an open world market for trade in telecommunications products, services, and investment;

(3) most foreign markets for telecommunications products, services, and investment are characterized by extensive government intervention (including restrictive import practices and discriminatory procurement practices) which adversely affect United States exports of telecommunications products and services and United States investment in telecommunications;

(4) the open nature of the United States telecommunications market, accruing from the liberalization and restructuring of such market, has contributed, and will continue to contribute, to an increase in imports of telecommunications products and a growing imbalance in competitive opportunities for trade in telecommunications;

(5) unless this imbalance is corrected through the achievement of mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries, the United States should avoid granting continued open access to the telecommunications products and services of such foreign countries in the United States market; and

(6) the unique business conditions in the worldwide market for telecommunications products and services caused by the combination of deregulation and divestiture in the United States, which represents a unilateral liberalization of United States trade with the rest of the world, and continuing government intervention in the domestic industries of many other countries create a need to make an exception in the case of telecommunications products and services that should not necessarily be a precedent for legislating specific sectoral priorities in combating the closed markets or unfair foreign trade practices of other countries.

(b) PURPOSES.—The purposes of this part are—

(1) to foster the economic and technological growth of, and employment in, the United States telecommunications industry;

(2) to secure a high quality telecommunications network for the benefit of the people of the United States;

(3) to develop an international consensus in favor of open trade and competition in telecommunications products and services;

(4) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and

(5) to achieve a more open world trading system for telecommunications products and services through negotiation and provision of mutually advantageous market opportunities for United States telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

SEC. 1373. DEFINITIONS.

For purposes of this part—

(1) The term "Trade Representative" means the United States Trade Representative.

(2) The term "telecommunications product" means—

(A) any paging devices provided for under item 685.65 of such Schedules, and

(B) any article classified under any of the following item numbers of such Schedules:

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. 1374. INVESTIGATION OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS.

(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 the date of enactment of this Act.

(b) FACTORS TO BE TAKEN INTO ACCOUNT.—In identifying priority foreign countries under subsection (a), 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 market;

(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)—

(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 309(3) of the Trade Act of 1974 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) 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. 1375. NEGOTIATIONS IN RESPONSE TO INVESTIGATION.

(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 1374(a) as a priority foreign country, and

(2) the date on which any foreign country is identified under section 1374(c)(1)(B) 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 which meets the specific negotiating objectives established by the President under subsection (b) 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 reflects 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.

SEC. 1376. ACTIONS TO BE TAKEN IF NO AGREEMENT OBTAINED.

(a) IN GENERAL.—

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A with any priority foreign country identified under section 1374 which achieves the general negotiating objectives described in section 1375(b) as defined by the specific objectives established by the President for that country, the President shall take whatever actions authorized under subsection (b) 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) 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,

(ii) section 201 of the Trade Expansion Act of 1962, or

(iii) section 350 of the Tariff Act of 1930,

with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 301 of the Trade Act of 1974;

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) 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 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 title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(2) Notwithstanding section 125 of the Trade Act of 1974 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 1374(a), the 18-month period beginning on the date of the enactment of this Act, 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) if, after taking into consideration the factors described in section 1374(b), 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) or of the modification or termination of any such action under subsection (d).

SEC. 1377. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE.

(a) IN GENERAL.—

(1) In conducting the annual analysis under section 181(a) of the Trade Act of 1974 (19 U.S.C. 2241), 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), 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) with respect to any act, policy, or practice of a foreign country shall, for purposes of chapter 1 of title III of the Trade Act of 1974, be treated as an affirmative determination under section 304(a)(1)(A) of such Act that such act, policy, or practice violates a trade agreement.

(2) In taking actions under section 301 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 affirmative determination made under subsection (a)(2).

SEC. 1378. COMPENSATION AUTHORITY.

If—

(1) the President has taken action under section 1376(a) 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. 1379. CONSULTATIONS.

(a) ADVICE FROM DEPARTMENTS AND AGENCIES.—Prior to taking any action under this part, the President shall seek information and advice from the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872).

(b) ADVICE FROM THE PRIVATE SECTOR.—Before—

(1) the Trade Representative concludes the investigation conducted under section 1374(a) or takes action under section 1374(c),

(2) the President establishes specific negotiating objectives under section 1375(b) with respect to any foreign country, or

(3) the President takes action under section 1376,

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 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(c) CONSULTATIONS WITH CONGRESS AND OFFICIAL ADVISORS.—For purposes of conducting negotiations under section 1375(a), the Trade Representative shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 135 of the Trade Act of 1974, 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 1375.

(d) MODIFICATION OF SPECIFIC NEGOTIATING OBJECTIVES.—Before the President takes any action under section 1375(b)(2)(A) 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. 1380. SUBMISSION OF DATA; ACTION TO ENSURE COMPLIANCE.

(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 the date of enactment of this Act 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 expires. Such information shall also be made available to the public.

SEC. 1381. STUDY ON TELECOMMUNICATIONS COMPETITIVENESS IN THE UNITED STATES.

(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).

(c) REPORT.—The Secretary of Commerce shall, by no later than the date that is 1 year after the date of enactment of this Act, 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). Such report shall be referred to the appropriate committees of the House of Representatives and of the Senate.

SEC. 1382. INTERNATIONAL OBLIGATIONS.

Nothing in this part may be construed to require actions inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

Subtitle D—Adjustment to Import Competition

PART 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

SEC. 1401. POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS.

(a) IN GENERAL.—Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251-2253) is amended to read as follows:

"CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

"SEC. 201. ACTION TO FACILITATE POSITIVE ADJUSTMENT TO IMPORT COMPETITION.

"(a) PRESIDENTIAL ACTION.—If the United States International Trade Commission (hereinafter referred to in this chapter as the 'Commission') determines under section 202(b) 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 producing an article like or directly competitive with the imported article, the President, in accordance with this chapter, 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.

"(b) POSITIVE ADJUSTMENT TO IMPORT COMPETITION.—

"(1) For purposes of this chapter, a positive adjustment to import competition occurs when—

"(A) the domestic industry—

"(i) is able to compete successfully with imports after actions taken under section 204 terminate, or

"(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

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

"(2) 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 petition was filed under subsection (a).

"SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

"(a) PETITIONS AND ADJUSTMENT PLANS.—

"(1) A petition requesting action under this chapter 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) A petition under paragraph (1)—

"(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 subsection (d)(1)(C)(i), request provisional relief under subsection (d)(1); or

"(ii) request, or at any time before the 150th day after the date of filing be amended to request, provisional relief under subsection (d)(2).

"(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

"(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this chapter referred to as 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.

"(5)(A) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to participate may consult with the Trade Representative, 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 chapter.

"(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.

"(6)(A) In the course of any investigation under subsection (b), 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.

"(B) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b), any—

"(i) firm in the domestic industry;

"(ii) certified or recognized union or group of workers in the domestic industry;

"(iii) local community;

"(iv) trade association representing the domestic industry; or

"(v) 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.

"(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the antitrust laws.

"(b) INVESTIGATIONS AND DETERMINATIONS BY COMMISSION.—

"(1)(A) Upon the filing of a petition under subsection (b), 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 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.

"(B) For purposes of this section, the term 'substantial cause' means a cause which is important and not less than any other cause.

"(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (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.

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

"(3)(A) If the Commission makes an affirmative determination under paragraph (1) and the petitioner alleges the existence of critical circumstances, the Commission shall make a determination regarding such allegation—

"(i) 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

"(ii) on or before the date the report required under subsection (f) 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) For purposes of this paragraph and subsection (d)(2), 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 chapter would cause harm that would significantly impair the effectiveness of such action.

"(4) In the course of any proceeding under this subsection, 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 subsection (a), and to be heard at such hearings.

"(c) FACTORS APPLIED IN MAKING DETERMINATIONS.—

"(1) In making determinations under subsection (b), 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 subsection (b), 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.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

"(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.

"(4) For purposes of subsection (b), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

"(A) 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;

"(B) 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

"(C) 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.

"(5) In the course of any proceeding under this subsection, 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 subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

"(6) For purposes of this subsection:

"(A) The term 'domestic industry' includes producers located in the United States insular possession.

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

"(d) PROVISIONAL RELIEF.—

"(1)(A) 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 subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

"(i) the imported product is a perishable agricultural product; and

"(ii) 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.

"(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930, 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 subsection (b).

"(C) If a petition filed under subsection (a)—

"(i) 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 paragraph (2) for not less than 90 days; and

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

the Commission shall, not later than the 21st day after the day on which the request was filed, 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—

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

"(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

"(D) 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 this subsection.

"(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), 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 subparagraph, 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.

"(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

"(G) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury or threat thereof.

"(2)(A) The Commission shall, at the same time it makes an affirmative determination under subsection (b)(3)(A) 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 each such affirmative determination and finding.

"(B) After receiving a report from the Commission under subparagraph (A), the President shall, within 7 days after the day on which the report is received and after taking into account the finding of the Commission under subparagraph (A), proclaim such provisional relief, if any, that the President considers appropriate to address the critical circumstances.

"(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(B) 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 paragraph (1)(C) or subsection (b)(1), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

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

"(i) if such relief was proclaimed under paragraph (1)(G), the Commission makes a negative determination under section 203(a) regarding injury or the threat thereof by imports of such article;

"(ii) action described in section 203(a)(3)(A) or (C) takes effect under section 203 with respect to such article;

"(iii) a decision by the President not to take any action under section 203(a) 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 (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

"(C) If an increase in, or the imposition of, a duty that is proclaimed under section 203 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 (3) 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 203 regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

"(5) For purposes of this subsection:

"(A) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

"(i) whether the article has—

"(I) a short shelf life,

"(II) a short growing season, or

"(III) a short marketing period,

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

"(iii) 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 clauses (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

"(B) The term 'provisional relief' means—
"(i) any increase in, or imposition of, any duty;
"(ii) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or
"(iii) any combination of actions under clauses (i) and (ii).

"(e) COMMISSION RECOMMENDATIONS.—
"(1) If the Commission makes an affirmative determination under subsection (b)(1), 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.
"(2) The Commission is authorized to recommend under paragraph (1)—
"(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 chapter 2; 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). The limitations set forth in section 203(e) are applicable to the action recommended by the Commission.
"(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—
"(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—
"(A) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and
"(B) take into account—
"(i) the form and amount of action described in paragraph (2) (A), (B), and (C) that would prevent or remedy the injury or threat thereof,
"(ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4),
"(iii) any individual commitment that was submitted to the Commission under subsection (a)(6),
"(iv) 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
"(v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.
"(6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the recommendation required to be made under paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f), separate views regarding what action, if any, should be taken under section 203.

"(f) REPORT BY COMMISSION.—
"(1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b). The report 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.
"(2) The Commission shall include in the report required under paragraph (1) the following:
"(A) The determination made under subsection (b) and an explanation of the basis for the determination.
"(B) If the determination under subsection (b) is affirmative, the recommendations for action made under subsection (e) and an explanation of the basis for each recommendation.
"(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).
"(D) The findings required to be included in the report under subsection (c)(2).
"(E) A copy of the adjustment plan, if any, submitted under section 201(b)(4).
"(F) 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.
"(G) A description of—
"(i) the short- and long-term effects that implementation of the action recommended under subsection (e) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and
"(ii) 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 is located, and on other domestic industries.
"(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under section 202(a)(6)(B) and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

"(g) EXPEDITED CONSIDERATION OF ADJUSTMENT ASSISTANCE PETITIONS.—If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—
"(1) 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 chapter 2; and
"(2) 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 chapter 3.

"(h) LIMITATIONS ON INVESTIGATIONS.—
"(1) 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 chapter, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.
"(2) If an article was the subject of an investigation under this section that resulted in any action described in section 203(a)(3) (A), (B), (C), or (G) being taken under section 203, no other investigation under this chapter 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. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.

"(a) IN GENERAL.—
"(1)(A) After receiving a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, 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.
"(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.
"(C) The interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 shall, with respect to each affirmative determination reported under section 202(f), make a recommendation to the President as to what action the President should take under subparagraph (A).
"(2) In determining what action to take under paragraph (1), the President shall take into account—
"(A) the recommendation and report of the Commission;
"(B) the extent to which workers and firms in the domestic industry are—
"(i) benefitting from adjustment assistance and other manpower programs, and
"(ii) engaged in worker retraining efforts;
"(C) 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 201(b)) to make a positive adjustment to import competition;
"(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;
"(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) 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;
"(F) other factors related to the national economic interest of the United States, including, but not limited to—
"(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this chapter,
"(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and
"(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;
"(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;
"(H) the potential for circumvention of any action taken under this section;

"(I) the national security interests of the United States; and

"(J) the factors required to be considered by the Commission under section 202(e)(5).

"(3) The President may, for purposes of taking action under paragraph (1)—

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

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

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

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

"(E) 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;

"(F) 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;

"(G) 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;

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

"(I) 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 paragraph (1); and

"(J) take any combination of actions listed in subparagraphs (A) through (I).

"(4) The President shall take action under paragraph (1) within 60 days after receiving a report from the Commission containing an affirmative determination under section 202(b)(1) (or a determination under such section which he considers to be an affirmative determination by reason of section 330(d) of the Tariff Act of 1930); except that if a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received.

"(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 202(b)(1), 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.

"(b) REPORTS TO CONGRESS.—

"(1) On the day the President takes action under subsection (a)(1), 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 202(e)(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 subsection (a)(1) 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 subsection (a)(1) 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.

"(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b) (1) or (2) that—

"(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or

"(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (c)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

"(d) TIME FOR TAKING EFFECT OF CERTAIN RELIEF.—

"(1) Except as provided in paragraph (2), any action described in subsection (a)(3) (A), (B), or (C), that is taken under subsection (a)(1) 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 subsection (a)(3) (A), (B), or (C) shall be proclaimed and take effect within 90 days after the date of such decision.

"(2) If the contingency set forth in subsection (c) 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 202(e)(1).

"(e) LIMITATIONS ON ACTIONS.—

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

"(B) 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.

"(2) Action may be taken under subsection (a)(1)(A), (B), or (C) or under section 202(d)(2)(B) only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury or threat thereof.

"(3) 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.

"(4) 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.

"(5) To the extent feasible, an effective period of more than 3 years for an action described in subsection (a)(3) (A), (B), or (C) shall be phased down during the period in which the action is taken, with the first 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.

"(6)(A) The suspension, pursuant to any action taken under this section, of—

"(i) item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article; and

"(ii) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty.

"(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 203(c), unless the Commission, in addition to making an affirmative determination under section 202(b)(1), determines in the course of its investigation under section 203(a) 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—

"(A) the application of item 806.30 or item 807.00; or

"(B) the designation of the article as an eligible article for the purposes of title V.

"(f) ORDERLY MARKETING AND OTHER AGREEMENTS.—

"(1) If the President takes action under this section 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.

"(2) If an orderly marketing agreement implemented under subsection (a) is not effective, the President may, consistent with the limitations contained in subsection (e), take additional action under subsection (a).

"(g) REGULATIONS.—

"(1) 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.

"(2) 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.

"(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.

"SEC. 204. MONITORING, MODIFICATION, AND TERMINATION OF ACTION.

"(a) MONITORING.—

"(1) So long as any action taken under section 203 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 203 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 203 which is under consideration.

"(b) REDUCTION, MODIFICATION, AND TERMINATION OF ACTION.—

"(1) Action taken under section 203 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 203 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 203 as may be necessary to eliminate any circumvention of any action previously taken under such section.

"(d) EVALUATION OF EFFECTIVENESS OF ACTION.—

"(1) After any action taken under section 203 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 203(b).

"(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 203 terminated.

"(e) OTHER PROVISIONS.—

"(1) Action by the President under this chapter may be taken without regard to the provisions of section 126(a) of this Act 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 202(c)(4)(C), 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)."

(b) CONFORMING AMENDMENTS.—

(1) TRADE ACT OF 1974.—The Trade Act of 1974 is amended as follows:

(A) section 123(b)(4) is amended by striking out "import relief under section 203(h)." and inserting "action under sections 203(e) and 204.".

(B) Sections 224 and 264 (19 U.S.C. 2274 and 2354) are each amended—

(i) by striking out "201" in subsection (a) and inserting "202";

(ii) by striking out "201" in subsection (b) and inserting "202(f)"; and

such section 264 is amended by striking out "201(b)" in subsection (c) and inserting "202(b)".

(2) CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—Section 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703) is amended—

(A) by striking out "proclaimed pursuant to section 203" in subsection (e)(1) and inserting "provided under chapter 1 of title II";

(B) by striking out "201(d)(1)" in subsection (e)(2) and inserting "202(f)";

(C) by striking out "(a) and (c) of section 203" in subsection (e)(3) and inserting "section 203";

(D) by amending subsection (e)(4)—

(i) by striking out "made under subsections (a) and (c) of section 203" and inserting "taken under section 203"; and

(ii) by striking out "201(b)" the first place it appears and inserting "202(b)"; and

(iii) by striking out "section 201(b) of such Act" and inserting "such section";

(E) by amending subsection (e)(5)—

(i) by striking out "proclamation issued pursuant to section 203" in subparagraph (A) and inserting "action taken under section 203"; and

(ii) by amending subparagraph (B)—

(I) by striking out "to import relief" and inserting "to any such action",

(II) by striking out "such import relief" and inserting "such action", and

(III) by striking out "subsections (h) and (i) of section 203" and inserting "section 203";

(F) by amending subsection (f)(4)—

(i) by amending subparagraph (A) by striking out "proclamation of import relief pursuant to section 202(a)(1)" and inserting "taking of action under section 203", and

(ii) by amending subparagraph (B) to read as follows:

"(B) on the day a determination by the President not to take action under section 203 of such Act not to take action becomes final,".

(3) TRADE AND TARIFF ACT OF 1984.—

(A) Title IV of the Tariff and Trade Act of 1984 is amended—

(i) by amending section 403—

(I) by striking out "section 201(d)(1)" in subsection (b) and inserting "section 202(f)",

(II) by striking out "subsections (a) and (c) of" in subsections (c) and (d),

(III) by striking out "201(b)" in subsection (d) and inserting "202(b)", and

(IV) by striking out "subsections (h) and (i) of section 203" in subsection (e)(2) and inserting "sections 203 and 204"; and

(ii) by amending section 404—

(I) by striking out "section 201" in subsection (a) and inserting "section 202(a)";

(II) by striking out "proclamation of import relief under section 202(a)(1)" in subsection (d)(1) and inserting "taking of action under section 203", and

(III) by amending subsection (d)(2) to read as follows:

"(2) on the day a determination of the President under section 203 of such Act not to take action becomes final;".

(4) TARIFF ACT OF 1930.—Section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) is amended—

(A) by amending paragraph (1) by striking out "201" and inserting "202";

(B) by amending paragraph (2)—

(i) by striking out "201" the first place it appears and inserting "202(b)",

(iii) by striking out "201(d)(1)" and inserting "202(e)(1)",

(iv) by striking out "sections 202 and 203" each place it appears and inserting "section 203", and

(v) by striking out "203(b)" in subparagraph (B) and inserting "204(a)"; and

(C) by striking out "203(c)(1)" in paragraph (4) and inserting "203(a)".

(5) TABLE OF CONTENTS.—The entry for such chapter 1 in the table of contents to the Trade Act of 1974 is amended to read as follows:

"CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

"Sec. 201. Action to facilitate positive adjustment to import competition.

"Sec. 202. Investigations, determinations, and recommendations by Commission.

"Sec. 203. Action by President after determination of import injury.

"Sec. 204. Monitoring, modification, and termination of action.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply with respect to investigations initiated under chapter 1 of title II of the Trade Act of 1974 on or after that date. Any petition filed under section 201 of such chapter before such date of enactment, and with respect to which the United States International Trade Commission did not make a finding before such date with respect to serious injury or the threat thereof, may be withdrawn and refiled, without prejudice, by the petitioner under section 202(a) of such chapter (as amended by this section).

PART 2—MARKET DISRUPTION

SEC. 1411. MARKET DISRUPTION.

(a) IN GENERAL.—Section 406 of the Trade Act of 1974 (19 U.S.C. 2436) is amended as follows—

(1) Subsection (b) is amended to read as follows:

"(b) With respect to any affirmative determination of the Commission under subsection (a)—

"(1) such determination shall be treated as an affirmative determination made under section 201(b) of this Act (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

"(2) sections 202 and 203 of this Act (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of chapter 1 of title II of this Act as amended by section 1401 of such Act of 1988, shall apply with respect to the taking of subsequent action, if any, by the President in response to such affirmative determination;

except that—

"(A) the President may take action under such sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

"(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.".

(2) Subsection (c) is amended by inserting "referred to in subsection (b)" after "sections 202 and 203".

(3) Subsection (e)(2) is amended—

(A) by inserting "(A)" after "(2)"; and

(B) by inserting at the end thereof the following new subparagraphs:

"(B) For purposes of subparagraph (A):

"(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.".

(b) CONFORMING AMENDMENTS REQUIRED BY AMENDMENT OF CHAPTER 1 OF TITLE II OF THE TRADE ACT OF 1974.—Such section 406 is further amended—

(1) by striking out "201(a)(1)" in subsection (a)(1) and subsection (d) and inserting "202(a)"; and

(2) by striking out "subsections (a)(2), (b)(3), and (c) of section 201" in subsection (a)(2) and inserting "subsections (a)(3), (b)(4), and (c)(4) of section 202".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply with respect to investigations initiated under section 406(a) of the Trade Act of 1974 on or after the date of the enactment of this Act.

PART 3—TRADE ADJUSTMENT ASSISTANCE

SEC. 1421. ELIGIBILITY OF WORKERS AND FIRMS FOR TRADE ADJUSTMENT ASSISTANCE.

(a) OIL AND NATURAL GAS INDUSTRY.—

(1)(A) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(i) by striking out "For purposes of paragraph (3), the term 'contributed importantly' means a cause which is important, but not necessarily more important than any other cause.",

(ii) by striking out "The Secretary" and inserting in lieu thereof "(a) The Secretary", and

(iii) by adding at the end thereof the following new subsection:

"(b) For purposes of subsection (a)(3)—

"(1) The term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

"(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

"(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.".

(B) Notwithstanding section 223(b) of the Trade Act of 1974, or any other provision of law, any certification made under subchapter A of chapter 2 of title II of such Act which—

(i) is made with respect to a petition filed before the date that is 90 days after the date of enactment of this Act, and

(ii) would not have been made if the amendments made by subparagraph (A) had not been enacted into law,

shall apply to any worker whose most recent total or partial separation from the firm, or appropriate subdivision of the firm, described in section 222(a) of such Act occurs after September 30, 1985.

(2) Subsection (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(c)) is amended to read as follows:

"(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

"(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(B) that—

"(i) sales or production, or both, of such firm have decreased absolutely, or

"(ii) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

"(C) increases of imports of articles like or directly competitive with articles which are produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"(2) For purposes of paragraph (1)(C)—

"(A) The term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

"(B)(i) Any firm which engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

"(ii) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.".

(b) APPLICATION TO ALL INDUSTRIES.—

(1) Paragraph (3) of section 222(a) of the Trade Act of 1974 (19 U.S.C. 2272(a)(3)) is amended to read as follows:

"(3) increases of imports of articles like or directly competitive with articles—

"(A) which are produced by such workers' firm or appropriate subdivision thereof, or

"(B) for which such workers' firm, or appropriate subdivision thereof, provides essential goods or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.".

(2) Subparagraph (C) of section 251(c)(1) of the Trade Act of 1974 (19 U.S.C. 2341(c)(1)(C)) is amended to read as follows:

"(C) increases of imports of articles like or directly competitive with articles—

"(i) which are produced by such firm, or

"(ii) for which such firm provides essential goods or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.".

SEC. 1422. NOTICE TO WORKERS OF BENEFITS UNDER TRADE ADJUSTMENT ASSISTANCE PROGRAM.

Section 225 of the Trade Act of 1974 (19 U.S.C. 2275) is amended—

(1) by striking out "The Secretary" in the first sentence and inserting in lieu thereof "(a) The Secretary", and

(2) by adding at the end thereof the following new subsection:

"(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A of this chapter—

"(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

"(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

"(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A in newspapers of general circulation in the areas in which such workers reside.".

SEC. 1423. CASH ASSISTANCE FOR WORKERS.

(a) PARTICIPATION IN TRAINING PROGRAM REQUIRED.—

(1) Paragraph (5) of section 231(a) of the Trade Act of 1974 (19 U.S.C. 2291(a)(5)) is amended to read as follows:

"(5) Such worker—

"(A) is enrolled in a training program approved by the Secretary under section 236(a),

"(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

"(C) has received a written statement certified under subsection (c)(1) after the date described in subparagraph (B).".

(2) Subsection (b) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291(b)) is amended to read as follows:

"(b)(1) If—

"(A) the Secretary determines that—

"(i) the adversely affected worker—

"(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

"(II) has ceased to participate in such training program before completing such training program, and

"(ii) there is no justifiable cause for such failure or cessation, or

"(B) the certification made with respect to such worker under subsection (c)(1) is revoked under subsection (c)(2),

no trade readjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

"(2) The provisions of subsection (a)(5) and paragraph (1) shall not apply with respect to any week of unemployment which begins—

"(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 221, and

"(B) before the first week following the week in which such certification is made under subchapter (A).".

(3) Subsection (c) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291(c)) is amended to read as follows:

"(c)(1)(A) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying such finding.

"(B) If a State or State agency has an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

"(i) submit to such worker a written statement certifying such finding, and

"(ii) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

"(2)(A) If, after submitting to a worker a written statement certified under paragraph (1)(A), the Secretary finds that it is feasible or appropriate to approve a training program for such worker under section 236(a), the Secretary shall submit to such worker a written statement that revokes the certification made under paragraph (1)(A) with respect to such worker.

"(B) If, after submitting to a worker a written statement certified under paragraph (1)(B), a State or State agency finds that it is feasible or appropriate to approve a training program for such worker pursuant to the requirements of section 236(a), the State or State agency shall submit to such worker, and to the Secretary, a written statement that revokes the certification made under paragraph (1)(B) with respect to such worker.

"(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under paragraph (1) during the preceding year and the number of certifications made under paragraph (1) that were revoked during the preceding year.".

(4) Paragraph (3) of section 239(a) of the Trade Act of 1974 (19 U.S.C. 2311(a)(3)) is amended to read as follows:

"(3) will make any certifications required under section 231(c)(2), and".

(b) WEEKLY AMOUNTS OF READJUSTMENT ALLOWANCES.—Section 232 of the Trade Act of 1974 (19 U.S.C. 2292) is amended—

(1) by striking out ", including on-the-job training," in subsection (b), and

(2) by striking out "under section 231(c) or 236(c)" in subsection (c) and inserting in lieu thereof "under section 231(b)".

(c) LIMITATIONS.—Section 233 of the Trade Act of 1974 (19 U.S.C. 2293) is amended—

(1) by striking out "is approved" in subsection (a)(3)(B) and inserting in lieu thereof "begins",

(2) by striking out "engaged in such training and has not been determined under section 236(c) to be failing to make satisfactory progress in the training" in subsection (a)(3) and inserting in lieu thereof "participating in such training", and

(3) by adding at the end thereof the following new subsection:

"(f) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 14 days if—

"(1) the worker was participating in a training program approved under section 236(a) before the beginning of such break in training, and

"(2) the break is provided under such training program.".

(d) SUPPLEMENTAL WAGE ALLOWANCE DEMONSTRATION PROJECTS.—

(1) Subchapter C of chapter 2 of title II of the Trade Act of 1974 is amended by inserting after section 245 the following new section:

"SEC. 246. SUPPLEMENTAL WAGE ALLOWANCE DEMONSTRATION PROJECTS.

"(a) The Secretary shall establish and carry out one or more demonstration projects during fiscal years 1989 and 1990 for the purpose of—

"(1) determining the attractiveness of a supplemental wage allowance to various categories of workers eligible for assistance under this chapter, based on the amount and duration of the supplement;

"(2) determining the effectiveness of a supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers; and

"(3) determining whether a supplemental wage allowance should be made an option under the Trade Adjustment Assistance program for all fiscal years.

"(b)(1) For purposes of this section, the term 'supplemental wage allowance' means a payment that is made to an adversely affected worker who—

"(A) accepts full-time employment at an average weekly wage that is less than the average weekly wage of the worker in the adversely affected employment,

"(B) prior to such acceptance, is eligible for trade readjustment allowances under part I of subchapter B, and

"(C) voluntarily elects to receive such payment in lieu of any trade readjustment allowances that the worker would otherwise be eligible to receive with respect to the period covered by the certification made under subchapter A that applies to such worker.

"(2) A supplemental wage allowance shall be provided under any demonstration project established under subsection (a) to a worker described in paragraph (1) for each week during which the worker performs services in the full-time employment referred to in paragraph (1)(A) in an amount that does not exceed the lesser of—

"(A) the amount of the trade readjustment allowance that the worker would have been eligible to receive for any week under part 1 of subchapter B if the worker had not accepted the full-time employment and had not made the election described in paragraph (1)(C), or

"(B) the excess of—

"(i) an amount equal to 80 percent of the average weekly wage of the worker in the adversely affected employment, over

"(ii) the average weekly wage in the full-time employment.

"(3)(A) Supplemental wage allowances shall not be provided under any demonstration project established under subsection (a) for more than 52 weeks.

"(B) The total amount of supplemental wage allowances that may be paid to any worker under any demonstration project established under subsection (a) with respect to the period covered by the certification applicable to such worker shall not exceed an amount that is equal to the excess of—

"(i) the amount of the limitation imposed under section 233(a)(1) with respect to such worker for such period, over

"(ii) the amount of the trade readjustment allowances paid under part I of subchapter B to such worker for such period.

"(c) The Secretary shall provide for an evaluation of demonstration projects conducted under this section to determine at least the following:

"(1) the extent to which different age groups of eligible recipients utilize the supplemental wage allowance;

"(2) the effect of the amount and duration of the supplemental wage allowance on the utilization of the allowance;

"(3) the extent to which the supplemental wage allowance affects the demand for training and the appropriateness thereof;

"(4) the extent to which the supplemental wage allowance facilitates the readjustment of workers who would not otherwise utilize benefits provided under this chapter;

"(5) the extent to which the allowance affects the cost of carrying out the provisions of this chapter; and

"(6) the effectiveness of the supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers.

"(d) By no later than the date that is 3 years after the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, the Secretary shall transmit to the Congress a report that includes—

"(1) an evaluation of the projects authorized under this section that is conducted in accordance with subsection (c), and

"(2) a recommendation as to whether the supplemental wage allowance should be available on a permanent basis as an option for some or all workers eligible for assistance under this chapter.".

(2) For purposes of funding the demonstration projects established under section 246(a) of the Trade Act of 1974, as added by paragraph (1) of this subsection—

(A) the supplemental wage allowances payable under such projects shall be considered to be trade readjustment allowances payable under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974, and

(B) the costs of administering such projects by the States shall be considered to be costs of administering such part I.

(3) The table of contents of the Trade Act of 1974 is amended by inserting after the item relating to section 245 the following new item:

"Sec. 246. Supplemental wage allowance demonstration projects.".

SEC. 1424. JOB TRAINING FOR WORKERS.

(a) IN GENERAL.—Subsection (a) of section 236 of the Trade Act of 1974 (19 U.S.C. 2296(a)) is amended—

(1) by striking out "is available" in paragraph (1)(D) and inserting in lieu thereof "is reasonably available",

(2) by striking out ", and" at the end of subparagraph (D) of paragraph (1),

(3) by adding "and" at the end of subparagraph (E) of paragraph (1),

(4) by inserting after subparagraph (E) of paragraph (1) the following new subparagraph:

"(F) such training is suitable for the worker and available at a reasonable cost,",

(5) by striking out "(to the extent appropriated funds are available)" in the first sentence of paragraph (1),

(6) by inserting "(subject to the limitations imposed by this section)" after "costs of such training" in the second sentence of paragraph (1),

(7) by inserting "directly or through a voucher system" after "by the Secretary" in the second sentence of paragraph (1),

(8) by striking out "and" at the end of subparagraph (C) of paragraph (4),

(9) by redesignating subparagraph (D) of paragraph (4) as subparagraph (F) of paragraph (4), and

(10) by inserting after subparagraph (C) of paragraph (4) the following new subparagraphs:

"(D) any program of remedial education,

"(E) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

"(i) under any Federal or State program other than this chapter, or

"(ii) from any source other than this section, and",

(11) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively,

(12) by inserting after paragraph (1) the following new paragraph:

"(2)(A) The total amount of payments that may be made under paragraph (1) for any fiscal year shall not exceed $80,000,000.

"(B) If, during any fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the amount of the limitation imposed under subparagraph (A), the Secretary shall decide how the portion of such limitation that has not been expended at the time of such estimate is to be apportioned among the States for the remainder of such fiscal year.

(13) by adding at the end of subsection (a) the following new paragraphs:

"(6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—

"(i) under any Federal or State program other than this chapter, or

"(ii) from any source other than this section.

"(B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker enter into an agreement with the Secretary under which the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in subparagraph (A) or (B) of paragraph (1).

"(7) The Secretary shall not approve a training program if—

"(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

"(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

"(C) such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

"(8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subchapter A at any time after the date on which the group is certified under subchapter A, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.

"(9) The Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).".

(b) DELAYED INCREASE IN LIMITATION.—Paragraph (2) of section 236(a) of the Trade Act of 1974, as added by subsection (a)(12) of this section, is amended by striking out "$80,000,000" in subparagraph (A) and inserting in lieu thereof "$120,000,000".

(c) ON-THE-JOB TRAINING.—Section 236 of the Trade Act of 1974 (19 U.S.C. 2296) is amended—

(1) by striking out that portion of subsection (d) that precedes paragraph (1) and inserting in lieu thereof the following:

"(d) The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section, only if—",

(2) by striking out subsection (c), and

(3) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(d) AGREEMENTS WITH THE STATES.—

(1)(A) Section 235 of the Trade Act of 1974 (19 U.S.C. 2295) is amended by striking out "cooperating State agencies" and inserting in lieu thereof "the States".

(B) Subsection (e) of section 239 of the Trade Act of 1974 (19 U.S.C. 2311(e)) is amended to read as follows:

"(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title III of the Job Training Partnership Act upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.".

(2) Subsection (f) of section 239 of the Trade Act of 1974 (19 U.S.C. 2311(f)) is amended to read as follows:

"(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

"(1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,

"(2) facilitate the early filing of petitions under section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter,

"(3) advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under part I of subchapter B, and

"(4) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.".

SEC. 1425. LIMITATION ON PERIOD IN WHICH TRADE READJUSTMENT ALLOWANCES MAY BE PAID.

(a) IN GENERAL.— Paragraph (2) of section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)(2)) is amended to read as follows:

"(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

"(A) within the period which is described in section 231(a)(1), and

"(B) with respect to which the worker meets the requirements of section 231(a)(2).".

(b) WAIVER OF CERTAIN TIME LIMITATIONS.—

(1) The provisions of subsections (a)(2) and (b) of section 233 of the Trade Act of 1974 shall not apply with respect to any worker who became totally separated from adversely affected employment (within the meaning of section 247 of such Act) during the period that began on August 13, 1981, and ended on April 7, 1986.

(2)(A) Any worker who is otherwise eligible for payment of a trade readjustment allowance under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 by reason of paragraph (1) of this subsection may receive payments of such allowance only if such worker—

(i) is enrolled in a training program approved by the Secretary under section 236(a) of such Act, and

(ii) has been unemployed continuously since the date on which the worker became totally separated from the adversely affected employment, not taking into account seasonal employment, odd jobs, or part-time, temporary employment.

(B) If the Secretary of Labor determines that—

(i) a worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subparagraph (A), or

(II) has ceased to participate in such training program before completing such training program, and

(ii) there is no justificable cause for such failure or cessation,

no trade readjustment allowance may be paid to the worker under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 for the week in which such failure or cessation occurred, or any succeeding week, until the worker begins or resumes participation in a training program approved under section 236(a) of such Act.

SEC. 1426. AUTHORIZATION OF TRADE ADJUSTMENT ASSISTANCE PROGRAM.

(a) EXTENSION OF SUNSET.—Subsection (b) of section 285 of the Trade Act of 1974 (19 U.S.C. 2271, preceding note) is amended to read as follows:

"(b) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, no technical assistance may be provided under chapter 3, and no duty shall be imposed under section 287, after September 30, 1993.".

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking out "1986, 1987, 1988, 1989, 1990, and 1991" and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, and 1993".

(2) Subsection (b) of section 256 of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking out "1986, 1987, 1988, 1989, 1990, and 1991" and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, and 1993".

(c) SPECIAL RULE.—In addition to amounts appropriated for payments under sections 236, 237, and 238 of the Trade Act of 1974 (19 U.S.C. 2296) for fiscal year 1988, such

amounts as may be necessary for payments under such sections—

(1) after the date of enactment of this Act, and

(2) before October 1, 1988,

are hereby appropriated and shall be charged to the appropriation for payments under such sections for fiscal year 1989.

SEC. 1427. TRADE ADJUSTMENT ASSISTANCE TRUST FUND.

(a) IN GENERAL.—Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.) is amended by inserting after section 285 the following new section:

"SEC. 286. TRADE ADJUSTMENT ASSISTANCE TRUST FUND.

"(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Adjustment Assistance Trust Fund (hereinafter in this section referred to as the 'Trust Fund'), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or appropriated to the Trust Fund under subsection (e).

"(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

"(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

"(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

"(i) on original issue at the issue price, or

"(ii) by purchase of outstanding obligations at the market price.

"(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

"(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

"(d)(1) Amounts in the Trust Fund shall be available—

"(A) for the payment of drawbacks and refunds of the duty imposed by section 287 that are allowable under any other provision of Federal law,

"(B) as provided in appropriation Acts—

"(i) for expenditures that are required to carry out the provisions of chapters 2 and 3, including administrative costs, and

"(ii) for payments required under subsection (e)(2).

"(2) None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.

"(3)(A) If the total amount of funds expended in any fiscal year to carry out chapters 2 and 3 (including administrative costs) exceeds an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed by section 287 during the preceding 1-year period, the Secretary of Labor and the Secretary of Commerce (in consultation with the Secretary of the Treasury) shall, notwithstanding any provision of chapter 2 or 3, make a pro rata reduction in—

"(i) the amounts of the trade readjustment allowances that are paid under part I of subchapter B of chapter 2, and

"(ii) the assistance provided under chapter 3,

to ensure (based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during the remainder of such fiscal year and for the fiscal year succeeding such fiscal year) that all workers and firms eligible for assistance under chapter 2 or 3 receive some assistance under chapter 2 or 3 and that the expenditures made in providing such assistance during the remainder of such fiscal year and the fiscal year succeeding such fiscal year do not exceed the amount of funds available in the Trust Fund to pay for such expenditures.

"(B) No reduction may be made under this paragraph in the amount of any trade readjustment allowance payable under part I of subchapter B of chapter 2 to any worker who received such trade readjustment allowance under such part for the week preceding the first week for which such reduction is otherwise being made under this paragraph.

"(C) If a pro rata reduction made under subparagraph (A) is in effect at the close of a fiscal year, the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, may adjust or modify such reduction at the beginning of the fiscal year succeeding such fiscal year, based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during that succeeding fiscal year.

"(D) Any pro rata reduction made under subparagraph (A), and any pro rata reduction adjusted or modified under subparagraph (C), shall cease to apply after the week in which—

"(i) a 1-year period ends during which the total amount of funds that would have been expended to carry out chapters 2 and 3, including administrative costs, if such reduction were not in effect did not exceed an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed during such 1-year period, or

"(ii) the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, determine that the amount of funds available in the Trust Fund are sufficient to carry out chapters 2 and 3 without such reduction.

"(e)(1)(A) There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d)(1)(B).

"(B) Any advance appropriated to the Trust Fund under the authority of subparagraph (A) may be paid to the Trust Fund only to the extent that the total amount of advances paid during the fiscal year to the Trust Fund from any appropriation authorized under subparagraph (A) that are outstanding after such advance is paid to the Trust Fund does not exceed the lesser of—

"(i) the excess of—

"(I) the total amount of funds that the Secretary of the Treasury (in consultation with the Secretary of Labor and the Secretary of Commerce) estimates will be necessary for the payments and expenditures described in subparagraphs (A) and (B) of subsection (d)(1) for such fiscal year, over

"(II) the total amount of funds that the Secretary of the Treasury estimates will be available in the Trust Fund during the fiscal year (determined without regard to any advances made under this subsection during such fiscal year), or

"(ii) the excess of—

"(I) an amount equal to 0.15 percent of the total value of all articles upon which the Secretary of the Treasury estimates a duty will be imposed by section 287 during such fiscal year, over

"(II) the amount described in clause (i)(II).

"(2) Advances made to the Trust Fund from appropriations authorized under paragraph (1)(A) shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury of the United States when the Secretary of the Treasury determines that sufficient funds are available in the Trust Fund for such purposes.

"(3) Interest on advances made from appropriations authorized under paragraph (1)(A) shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding.".

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting, after the item relating to section 285, the following new items:

"Sec. 286. Trade Adjustment Trust Fund.
"Sec. 287. Imposition of additional fee.".

SEC. 1428. IMPOSITION OF SMALL UNIFORM FEE ON ALL IMPORTS.

(a) NEGOTIATIONS.—

(1) The President shall—

(A) undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform fee of not more than 0.15 percent on all imports to such country for the purpose of using the revenue from such fee to fund programs which directly assist adjustment to import competition, and

(B) undertake negotiations with any foreign country that has entered into a free trade agreement with the United States under subtitle A or under section 102 of the Trade Act of 1974 to obtain the consent of such country to the imposition of such a fee by the United States.

(2) In the report that is submitted under section 163 of the Trade Act of 1974 for 1989 and 1990, the President shall include a state-

ment on the progress of negotiations conducted under paragraph (1).

(3)(A) On the first day after the date of enactment of this Act on which the General Agreement on Tariffs and Trade allows any country to impose a fee described in paragraph (1), the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such allowance.

(B) On the first day after the date of enactment of this Act on which any foreign country described in paragraph (1)(B) consents to the imposition of such a fee by the United States, the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such consent.

(4) If—

(A) the President does not submit to the Congress the written statement described in paragraph (3)(A) before the date that is 2 years after the date of enactment of this Act, and

(B) the President determines on such date that the fee imposed by the amendment made by subsection (b) is not in the national economic interest,

the President shall submit to the Congress, and publish in the Federal Register, written notice of such determination on such date.

(5)(A) Any disapproval resolution that is introduced in the Senate or House of Representatives within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act shall, for purposes of section 152 of the Trade Act of 1974 (19 U.S.C. 2192), be treated as a joint resolution described in section 152(a)(1)(A) of such Act.

(B) For purposes of this part, the term "disapproval resolution" means a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress disapproves of the determination made by the President under section 1428(a)(4)(A) of the Omnibus Trade and Competitiveness Act of 1988.".

(b) IMPOSITION OF FEE.—Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.), as amended by the preceding section of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 287. IMPOSITION OF ADDITIONAL FEE.

"(a) In addition to any other fee imposed by law, there is hereby imposed a fee on all articles entered, or withdrawn from warehouse, for consumption in the customs territory of the United States during any fiscal year.

"(b)(1) The rate of the fee imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President that is equal to the lesser of—

"(A) 0.15 percent, or

"(B) the percentage that is sufficient to provide the funding necessary to—

"(i) carry out the provisions of chapters 2 and 3, and

"(ii) repay any advances made under section 286(e).

"(2) The President shall issue a proclamation setting forth the rate of the fee imposed by subsection (a) by no later than the date that is 15 days before the first date on which a fee is imposed under subsection (a).

"(3)(A) For each fiscal year succeeding the first fiscal year in which a fee is imposed under subsection (a), the President shall issue a proclamation adjusting the rate of the fee imposed by subsection (a) during such fiscal year to the ad valorem rate that meets the requirements of paragraph (1) for such fiscal year.

"(B) Any proclamation issued under subparagraph (A) for a fiscal year shall be issued at least 30 days before the beginning of such fiscal year.

"(c)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other provision of law shall not prevent the imposition of a fee with respect to such article by subsection (a).

"(2) No fee shall be imposed by subsection (a) with respect to—

"(A) any article (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of the Tariff Schedules of the United States) that is treated as duty-free under schedule 8 of the Tariff Schedules of the United States, or

"(B) any article which has a value of less than $1,000.".

SEC. 1429. STUDY OF CERTIFICATION METHODS.

(a) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of Commerce, shall conduct a study of the methods (including, but not limited to, industry-wide certification) that could be used to expedite the certification of workers under subchapter A of chapter 2 of title II of the Trade Act of 1974.

(b) REPORT.—By no later than the date that is 6 months after the date of enactment of this Act, the Secretary of Labor shall submit to the Congress a report on the study conducted under subsection (a). The report shall include the recommendations of the Secretary of Labor regarding the methods that are the subject of the study conducted under subsection (a).

SEC. 1430. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided by this section, the amendments made by this part shall take effect on the date of enactment of this Act.

(b) ADDITIONAL FEE.—

(1) Except as otherwise provided in this subsection, the amendment made by section 1428(b) shall apply (if at all) to any article entered, or withdrawn from warehouse for consumption, after the date that is 30 days after the earlier of—

(A) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(A),

(B) the date that is 2 years after the date of enactment of this Act, or

(C) the date of the enactment of a disapproval resolution that passes both Houses of the Congress within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act.

(2) If the President determines on the date that is 2 years after the date of enactment of this Act that the fee imposed by the amendment made by section 1428(b) is not in the national economic interest, subparagraph (B) of paragraph (1) shall not be taken into account in applying the provisions of paragraph (1).

(3) The amendment made by section 1428(b) shall apply (if at all) to the products of any foreign country described in section 1428(a)(1)(B) that are entered, or withdrawn from warehouse for consumption, after the later of—

(A) the first date on which the fee imposed by such amendment applies with respect to products of foreign countries that are not described in section 1428(a)(1)(B), or

(B) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(B) certifying the consent of such foreign country to the imposition of the fee.

(c) TRUST FUND.—The amendments made by section 1427 shall take effect on the first date on which the amendment made by section 1428(b) applies with respect to any articles.

(d) ELIGIBILITY OF WORKERS AND FIRMS.—The amendments made by sections 1421(b) and 1424(b) shall take effect on the date that is 1 year after the first date on which the amendment made by section 1428(b) applies with respect to any articles.

(e) NOTIFICATION REQUIREMENTS.—The amendments made by section 1422 shall take effect on the date that is 30 days after the date of enactment of this Act.

(f) TRAINING REQUIREMENT.—The amendments made by subsections (a), (b)(2), and (c)(2) of section 1423 and by paragraphs (2) and (3) of section 1424(c) shall take effect on the date that is 90 days after the date of enactment of this Act.

(g) LIMITATION ON PERIOD FOR WHICH TRADE READJUSTMENT ALLOWANCES MAY BE MADE.—The amendment made by section 1425(a) shall not apply to with respect to any total separation of a worker from adversely affected employment (within the meaning of section 247 of such Act) that occurs before the date of enactment of this Act if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974.

Subtitle E—National Security

SEC. 1501. IMPORTS THAT THREATEN NATIONAL SECURITY.

(a) IN GENERAL.—Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) is amended—

(1) by striking out "subsection (b)" each place it appears in subsection (e) and inserting in lieu thereof "subsection (c)",

(2) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and

(3) by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(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.

"(c)(1)(A) Within 90 days after receiving a report submitted under subsection (b)(3)(A) 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 (e).

"(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 makes 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) If—

"(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.".

(b) REPORTS.—

(1) Subsection (e) of section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), as redesignated by subsection (a)(2), is amended to read as follows:

"(d)(1) Upon the disposition of each request, application, or motion under subsection (b), 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.".

(2) Section 127 (c) of the Trade Act of 1974 (19 U.S.C. 1863) is repealed.

(c) ENFORCEMENT OF MACHINE TOOL IMPORT ARRANGEMENTS.—

(1) The Secretary of Commerce is authorized to request the Secretary of the Treasury to carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of the machine tool decision of the President on May 20, 1986, and to enforce any quantitative limitation, restriction, or other terms contained in related bilateral arrangements. Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of assembled and unassembled machine tool products.

(2) For purposes of this subsection, the term "related bilateral arrangement" means any arrangement, agreement, or understanding entered into or undertaken, or previously entered into or undertaken, by the United States and any foreign country or customs union containing such quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of categories of assembled and unassembled machine tool products as may be necessary to implement such machine tool decision of May 20, 1986.

(d) APPLICATION OF AMENDMENTS.—

(1) Except as otherwise provided under this subsection, the amendments made by this section shall apply with respect to investigations initiated under section 232(b) of the Trade Expansion Act of 1962 on or after the date of enactment of this Act.

(2) The provisions of subsection (c) of section 232 of the Trade Expansion Act of 1962, as amended by this section, shall apply with respect to any report submitted by the Secretary of Commerce to the President under section 232(b) of such Act after the date of enactment of this Act.

(3) By no later than the date that is 90 days after the date of enactment of this Act, the President shall make the determinations described in section 232(c)(1)(A) of the Trade Expansion Act of 1962, as amended by this section, with respect to any report—

(A) which was submitted by the Secretary of Commerce to the President under section 232(b) of such Act before the date of enactment of this Act, and

(B) with respect to which no action has been taken by the President before the date of enactment of this Act.

Subtitle F—Trade Agencies; Advice, Consultation, and Reporting Regarding Trade Matters

PART 1—FUNCTIONS AND ORGANIZATION OF TRADE AGENCIES

Subpart A—Office of the United States Trade Representative

SEC. 1601. FUNCTIONS.

(a) IN GENERAL.—Section 141(c) of the Trade Act of 1974 (19 U.S.C. 2171(c)) is amended—

(1) by amending paragraph (1) to read as follows:

"(c)(1) The United States Trade Representative shall—

"(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

"(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

"(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including commodity and direct investment negotiations, in which the United States participates;

"(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

"(E) act as the principal spokesman of the President on international trade;

"(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

"(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

"(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

"(I) be chairman of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and shall consult with and be advised by such organization in the performance of his functions; and

"(J) in addition to those functions that are delegated to the United States Trade Representative as of the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, be responsible for such other functions as the President may direct.";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(3) by inserting after paragraph (1) the following:

"(2) It is the sense of Congress that the United States Trade Representative should—

"(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

"(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.".

(b) UNFAIR TRADE PRACTICES.—Such section 141 is further amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (c) the following new subsection:

"(d)(1) In carrying out subsection (c) with respect to unfair trade practices, the United States Trade Representative shall—

"(A) coordinate the application of interagency resources to specific unfair trade practice cases;

"(B) identify, and refer to the appropriate Federal department or agency for consideration with respect to action, each act, policy, or practice referred to in the report required under section 181(b), or otherwise known to the United States Trade Representative on the basis of other available information, that may be an unfair trade practice that either—

"(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce, or

"(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws;

"(C) identify practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objectives would eliminate; and

"(D) identify, on a biennial basis, those United States Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under United States law.

"(2) For purposes of carrying out paragraph (1), the United States Trade Representative shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

"(A) The Bureau of Economics and Business Affairs of the Department of State.

"(B) The United States and Foreign Commercial Services of the Department of Commerce.

"(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

"(D) The Foreign Agricultural Service of the Department of Agriculture.

The United States Trade Representative may also request the advice of the United States International Trade Commission regarding the carrying out of paragraph (1).

"(3) For purposes of this subsection, the term 'unfair trade practice' means any act, policy, or practice that—

"(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII;

"(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII;

"(C) may be either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337; or

"(D) may be an act, policy, or practice of a kind with respect to which action may be taken under title III of the Trade Act of 1974.".

Subpart B—United States International Trade Commission

SEC. 1611. SERVICE ON COMMISSION FOR PURPOSES OF DETERMINING ELIGIBILITY FOR DESIGNATION AS CHAIRMAN.

Section 330(c)(A)(i) of the Tariff Act of 1930 (19 U.S.C. 1330(c)(A)(i)) is amended by striking out "most recently appointed to" and inserting "with the shortest period of service on".

SEC. 1612. TREATMENT OF COMMISSION UNDER PAPERWORK REDUCTION ACT.

Section 330 of the Tariff Act of 1930 (19 U.S.C. 1330) is amended by adding at the end thereof the following new subsection:

"(f) The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code.".

SEC. 1613. TREATMENT OF CONFIDENTIAL INFORMATION BY COMMISSION.

The first sentence of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) is amended by striking out ", and shall report to Congress" and inserting ". However, the Commission may not release information which the Commission considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress.".

SEC. 1614. TRADE REMEDY ASSISTANCE OFFICE.

Section 339 of the Tariff Act of 1930 (19 U.S.C. 1339) is amended—

(1) by amending subsection (a)—

(A) by striking out "a Trade" and inserting "a separate office to be known as the Trade", and

(B) by striking out ", upon request, concerning—" and inserting "upon request and shall, to the extent feasible, provide assistance and advice to interested parties concerning—"; and

(2) by amending subsection (b) to read as follows:

"(b) The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

"(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

"(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.".

Subpart C—Interagency Trade Organization

SEC. 1621. FUNCTIONS AND ORGANIZATION.

(a) IN GENERAL.—Section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) The President shall establish an interagency organization.

"(2) The functions of the organization are—

"(A) to assist, and make recommendations to, the President in carrying out the functions vested in him by the trade laws and to advise the United States Trade Representative (hereinafter in this section referred to as the 'Trade Representative') in carrying out the functions set forth in section 141 of the Trade Act of 1974;

"(B) to assist the President, and advise the Trade Representative, with respect to the development and implementation of the international trade policy objectives of the United States; and

"(C) to advise the President and the Trade Representative with respect to the relationship between the international trade policy objectives of the United States and other major policy areas which may significantly affect the overall international trade policy and trade competitiveness of the United States.

"(3) The interagency organization shall be composed of the following:

"(A) The Trade Representative, who shall be chairperson.

"(B) The Secretary of Commerce.

"(C) The Secretary of State.

"(D) The Secretary of the Treasury.

"(E) The Secretary of Agriculture.

"(F) The Secretary of Labor.

The Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the Chairman shall direct.".

(2) Subsection (b) is amended by adding at the end thereof the following:

"In carrying out its functions under this subsection, the organization shall take into account the advice of the congressional advisers and private sector advisory committees, as well as that of any committee or other body established to advise the department, agency, or office which a member of the organization heads.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that the interagency organization established under subsection (a) should be the principal interagency forum within the executive branch on international trade policy matters.

PART 2—ADVICE AND CONSULTATION REGARDING TRADE POLICY, NEGOTIATIONS, AND AGREEMENTS

SEC. 1631. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS RELATING TO TRADE POLICY AND AGREEMENTS.

Section 135 of the Trade Act of 1974 (19 U.S.C. 2155) is amended to read as follows:

"SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.

"(a) IN GENERAL.—

"(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

"(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or section 1102 of the Omnibus Trade and Competitiveness Act of 1988;

"(B) the operation of any trade agreement once entered into; and

"(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

"(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the

United States. The consultations shall include, but are not limited to, the following elements of such policy:

"(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

"(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

"(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

"(D) Important developments in other areas of trade for which there must be developed a proper policy response.

"(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

"(b) ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS.—

"(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 2 years. An individual may be reappointed to committee for any number of terms. Appointments to the Committee shall be made without regard to political affiliation.

"(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

"(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

"(c) GENERAL POLICY, SECTORAL, OR FUNCTIONAL ADVISORY COMMITTEES.—

"(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

"(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

"(A) consult with interested private organizations; and

"(B) take into account such factors as—

"(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

"(ii) the character of the nontariff barriers and other distortions affecting such competition,

"(iii) the necessity for reasonable limits on the number of such advisory committees,

"(iv) the necessity that each committee be reasonably limited in size, and

"(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

"(3) The President—

"(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

"(i) on matters referred to in subsection (a), and

"(ii) with respect to implementation of trade agreements, and

"(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

"(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

"(d) POLICY, TECHNICAL, AND OTHER ADVICE AND INFORMATION.—Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

"(e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.—

"(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 1103(a)(1)(A) of such Act of 1988 of his intention to enter into that agreement.

"(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 1101 of the Omnibus Trade and Competitiveness Act of 1988, as appropriate.

"(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

"(f) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act apply—

"(1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b); and

"(2) to all other advisory committees which may be established under subsection (c); except that the meetings of advisory committees established under subsections (b) and (c) shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a), and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c).

"(g) TRADE SECRETS AND CONFIDENTIAL INFORMATION.—

"(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

"(A) officers and employees of the United States designated by the United States Trade Representative;

"(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 161(a)(1) or are designated by the chairmen of either such committee under section 161(b)(3)(A) and staff members of either such committee designated by the chairmen under section 161(b)(3)(A); and

"(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 161(a)(2) or designated by the chairman of such committee under section 161(b)(3)(B) and staff members of such committee designated under section 161(b)(3)(B), but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee;

for use in connection with matters referred to in subsection (a).

"(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under

subsection (c), in connection with matters referred to in subsection (a), may be disclosed upon request to—

"(A) the individuals described in paragraph (1); and

"(B) the appropriate advisory committee established under this section.

"(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

"(h) ADVISORY COMMITTEE SUPPORT.—The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) as such committees may reasonably require to carry out their activities.

"(i) CONSULTATION WITH ADVISORY COMMITTEES; PROCEDURES; NONACCEPTANCE OF COMMITTEE ADVICE OR RECOMMENDATIONS.—It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

"(1) significant issues and developments; and

"(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this title, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

"(j) PRIVATE ORGANIZATIONS OR GROUPS.—In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g), on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a).

"(k) SCOPE OF PARTICIPATION BY MEMBERS OF ADVISORY COMMITTEES.—Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

"(l) ADVISORY COMMITTEES ESTABLISHED BY DEPARTMENT OF AGRICULTURE.—The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c).

"(m) NON-FEDERAL GOVERNMENT DEFINED.—As used in this section, the term 'non-Federal government' means—

"(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

"(2) any agency or instrumentality of any entity described in paragraph (1).".

SEC. 1632. CONGRESSIONAL LIAISON REGARDING TRADE POLICY AND AGREEMENTS.

Section 161 of the Trade Act of 1974 (19 U.S.C. 2211) is amended to read as follows:

"SEC. 161. CONGRESSIONAL ADVISERS FOR TRADE POLICY AND NEGOTIATIONS.

"(a) SELECTION.—

"(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

"(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

"(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations; and

"(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

"(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

"(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

"(ii) the chairman and ranking minority member of the committee from which the member will be selected.

"(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

"(b) BRIEFING.—

"(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

"(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

"(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(1)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

"(B) The Chairman of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

"(c) COMMITTEE CONSULTATION.—The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

"(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

"(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

"(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

"(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee in executive session to review matters under negotiation.".

PART 3—ANNUAL REPORTS AND NATIONAL TRADE POLICY AGENDA

SEC. 1641. REPORTS AND AGENDA.

Section 163 of the Trade Act of 1974 (19 U.S.C. 2213) is amended to read as follows:

"SEC. 163. REPORTS.

"(a) ANNUAL REPORT ON TRADE AGREEMENTS PROGRAM AND NATIONAL TRADE POLICY AGENDA.—

"(1) The President shall submit to the Congress during each calendar year (but not later than March 1 of that year) a report on—

"(A) the operation of the trade agreements program, and the provision of import relief and adjustment assistance to workers and firms, under this Act during the preceding calendar year; and

"(B) the national trade policy agenda for the year in which the report is submitted.

"(2) The report shall include, with respect to the matters referred to in paragraph (1)(A), information regarding—

"(A) new trade negotiations;

"(B) changes made in duties and nontariff barriers and other distortions of trade of the United States;

"(C) reciprocal concessions obtained;

"(D) changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor);

"(E) the extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of foreign countries;

"(F) the extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries;

"(G) the results of actions to obtain the removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment;

"(H) the measures being taken to seek the removal of other significant foreign import restrictions;

"(I) each of the referrals made under section 141(d)(1)(B) and any action taken with respect to such referral;

"(J) other information relating to the trade agreements program and to the agreements entered into thereunder; and

"(K) the number of applications filed for adjustment assistance for workers and firms, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.

"(3)(A) The national trade policy agenda required under paragraph (1)(B) for the year in which a report is submitted shall be in the form of a statement of—

"(i) the trade policy objectives and priorities of the United States for the year, and the reasons therefor;

"(ii) the actions proposed, or anticipated, to be undertaken during the year to achieve such objectives and priorities, including, but not limited to, actions authorized under the trade laws and negotiations with foreign countries;

"(iii) any proposed legislation necessary or appropriate to achieve any of such objectives or priorities; and

"(iv) the progress that was made during the preceding year in achieving the trade policy objectives and priorities included in the statement provided for that year under this paragraph.

"(B) The President may separately submit any information referred to in subparagraph (A) to the Congress in confidence if the President considers confidentiality appropriate.

"(C) Before submitting the national trade policy agenda for any year, the President shall seek advice from the appropriate advisory committees established under section 135 and shall consult with the appropriate committees of the Congress.

"(D) The United States Trade Representative (hereafter referred to in this section as the 'Trade Representative') and other appropriate officials of the United States Government shall consult periodically with the appropriate committees of the Congress regarding the annual objectives and priorities set forth in each national trade policy agenda with respect to—

"(i) the status and results of the actions that have been undertaken to achieve the objectives and priorities; and

"(ii) any development which may require, or result in, changes to any of such objectives or priorities.

"(b) ANNUAL TRADE PROJECTION REPORT.—

"(1) In order for the Congress to be informed of the impact of foreign trade barriers and macroeconomic factors on the balance of trade of the United States, the Trade Representative and the Secretary of the Treasury shall jointly prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter referred to in this subsection as the 'Committees') on or before March 1 of each year a report which consists of—

"(A) a review and analysis of—

"(i) the merchandise balance of trade,

"(ii) the goods and services balance of trade,

"(iii) the balance on the current account,

"(iv) the external debt position,

"(v) the exchange rates,

"(vi) the economic growth rates,

"(vii) the deficit or surplus in the fiscal budget, and

"(viii) the impact on United States trade of market barriers and other unfair practices,

of countries that are major trading partners of the United States, including, as appropriate, groupings of such countries;

"(B) projections for each of the economic factors described in subparagraph (A) (except those described in clauses (v) and (viii)) for each of the countries and groups of countries referred to in subparagraph (A) for the year in which the report is submitted and for the succeeding year; and

"(C) conclusions and recommendations, based upon the projections referred to in subparagraph (B), for policy changes, including trade policy, exchange rate policy, fiscal policy, and other policies that should be implemented to improve the outlook.

"(2) To the extent that subjects referred to in paragraph (1)(A), (B), or (C) are covered in the national trade policy agenda required under subsection (a)(1)(B) or in other reports required by this Act or other law, the Trade Representative and the Secretary of the Treasury may, as appropriate, draw on the information, analysis, and conclusions, if any, in those reports for the purposes of preparing the report required by this subsection.

"(3) The Trade Representative and the Secretary of the Treasury shall consult with the Chairman of the Board of Governors of the Federal Reserve System in the preparation of each report required under this subsection.

"(4) The Trade Representative and the Secretary of the Treasury may separately submit any information, analysis, or conclusion referred to in paragraph (1) to the Committees in confidence if the Trade Representative and the Secretary consider confidentiality appropriate.

"(5) After submission of each report required under paragraph (1), the Trade Representative and the Secretary of the Treasury shall consult with each of the Committees with respect to the report.

"(c) ITC REPORTS.—The United States International Trade Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.".

Subtitle G—Tariff Provisions

PART 1—AMENDMENTS TO THE TARIFF SCHEDULES OF THE UNITED STATES

SEC. 1701. REFERENCE.

Whenever in this part an amendment or repeal is expressed in terms of an amendment to, or repeal of, a schedule, headnote, item, the Appendix, or other provision, the reference shall be considered to be made to a schedule, headnote, item, the Appendix, or other provision of the Tariff Schedules of the United States.

Subpart A—Permanent Changes in Tariff Treatment

SEC. 1711. BROADWOVEN FABRICS OF MAN-MADE FIBERS.

(a) IN GENERAL.—Subpart E of part 3 of schedule 3 is amended by striking out item 338.50 and inserting the following new items with the article description for item 338.60 having the same degree of indentation as the article description for item 338.40:

"	338.60	Containing 85% or more by weight of continuous man-made fibers	17% ad val.	8.5% ad val. (I)	81% ad val.	
		Other:				
	338.70	Weighing not more than 5 oz. per square yard	17% ad val.	8.5% ad val. (I)	81% ad val.	
	338.80	Other	17% ad val.	8.5% ad val. (I)	81% ad val.	".

(b) STAGED RATE REDUCTION.—Any staged rate reduction of a rate of duty set forth in item 338.50 of the Tariff Schedules of the United States (as in effect before the date of enactment of this Act) that was proclaimed by the President before the date of enactment of this Act and would otherwise take effect after the date of enactment of this Act shall apply to the corresponding rates of duty set forth in items 338.60, 338.70, and 338.80 of such Schedules.

SEC. 1712. NAPHTHA AND MOTOR FUEL BLENDING STOCKS.

Part 10 of schedule 4 is amended—

(1) by amending headnote 1 by inserting "motor fuel blending stocks," immediately after "except";

(2) by amending headnote 2—

(A) by striking out "and" at the end of subdivision (a);

(B) by striking out the period at the end of subdivision (b) and inserting "; and"; and

(C) by adding at the end thereof the following:

"(c) 'Motor fuel blending stock' (item 475.27) means any product (except naphthas provided for in item 475.35) derived primarily from petroleum, shale oil, or natural gas, whether or not containing additives, to be used for direct blending in the manufacture of motor fuel.";

(3) by inserting in numerical sequence the following new item with an article description having the same degree of indentation as the article description for item 475.30:

"	475.27	Motor fuel blending stocks	1.25¢ per gal.		2.5¢ per gal. ",

(4) by amending 475.30 by striking out "fuel)" and inserting "fuel or motor fuel blending stocks)", and

(5) by amending 475.35 by striking out "fuel)" and inserting in lieu thereof "fuel or motor fuel blending stocks)".

SEC. 1713. WATCHES AND WATCH COMPONENTS.

Headnote 4 of subpart E of part 2 of schedule 7 is amended to read as follows:

"4. Special Marking Requirements: Any movement or case provided for in this subpart, whether imported separately or attached to any article provided for in this subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, stamping, or mold-marking (either indented or raised), as specified below:

"(a) Watch movements shall be marked on one or more of the bridges or top plates to show—

"(i) the name of the country of manufacture;

"(ii) the name of the manufacturer or purchaser; and

"(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings.

"(b) Clock movements shall be marked on the most visible part of the front or back plate to show—

"(i) the name of the country of manufacture;

"(ii) the name of the manufacturer or purchaser; and

"(iii) the number of jewels, if any.

"(c) Watch cases shall be marked on the inside or outside of the back case to show—

"(i) the name of the country of manufacture; and

"(ii) the name of the manufacturer or purchaser.

"(d) Clock cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture.".

SEC. 1714. SLABS OF IRON OR STEEL.

Headnote 3(c) to subpart B of part 2 of schedule 6 is amended by striking out "and not over 6 inches".

SEC. 1715. CERTAIN WORK GLOVES.

(a) Headnote 5(a) to schedule 3 is amended by striking out "(except subpart A)" and inserting in lieu thereof "(except subparts A and C)".

(b) Headnote 1 to subpart C of part 1 of schedule 7 of the Tariff Schedules of the United States is amended—

(1) by striking out "and" at the end of subdivision (b),

(2) by striking out the period at the end of subdivision (c) and inserting in lieu thereof "; and", and

(3) by adding after subdivision (c) the following new subdivision:

"(d) gloves which are—

"(i) other than gloves with fourchettes, and

"(ii) constructed of a textile fabric coated, filled, impregnated, or laminated, in whole or in part, with rubber or plastics and cut-and-sewn,

shall be regarded as gloves of textile materials.".

SEC. 1716. DUTY-FREE IMPORTATION OF HATTER'S FUR.

(a) IN GENERAL.—Subpart D of part 15 of schedule 1 is amended—

(1) by striking out "use, and carroted furskins" in item 186.20 and inserting in lieu thereof "use",

(2) by striking out "15% ad val." in item 186.20 and inserting in lieu thereof "Free",

(3) by striking out "Free (A,E) 4.8% ad val. (I)" in item 186.20, and

(4) by inserting after item 186.20 the following new item with the article description having the same degree of indentation as the article description in item 186.20:

"	186.22	Carroted furskins	15% ad val.	Free (A,E) 4.8% ad val. (I)	35% ad val. ",

(b) STAGED RATE REDUCTION.—Any staged rate reduction of a rate of duty set forth in item 186.20 of the Tariff Schedules of the United States that was proclaimed by the President before the date of enactment of this Act and would otherwise take effect after the date of enactment of this Act shall apply to the corresponding rate of duty set forth in item 186.22 of such Schedules.

SEC. 1717. EXTRACORPOREAL SHOCK WAVE LITHOTRIPTERS.

Item 709.15 is amended by inserting "other than extracorporeal shock wave lithotripters," before "and".

SEC. 1718. SALTED AND DRIED PLUMS.

(a) IN GENERAL.—Subpart B of part 9 of schedule 1 is amended by striking out item 149.28 and inserting in lieu thereof the following items with the article descriptions having the same degree of indentation as the article description in item 149.26:

"	149.27	Soaked in brine and dried	2¢ per lb.	Free (E,I)	2¢ per lb.
	149.29	Otherwise prepared or preserved	17.5% ad val.	Free (E) 5.6% ad val. (I)	35% ad val. ",

(b) STAGED RATE REDUCTION.—Any staged rate reduction of a rate of duty set forth in item 149.28 of the Tariff Schedules of the United States that was proclaimed by the President before the date of enactment of this Act and would otherwise take effect after the date of enactment of this Act shall apply to the corresponding rates of duty set forth in items 149.27 and 149.29 of such Schedules.

SEC. 1719. TELEVISION APPARATUS AND PARTS.

(a) PERMANENT TREATMENT.—The headnotes to part 5 of schedule 6 are amended—

(1) by striking out "assembled," in subparagraph (a) of headnote 3 and inserting in lieu thereof "assembled in its cabinet,";

(2) by redesignating headnotes 4, 5, and 6 as headnotes 5, 6, and 7, respectively; and

(3) by inserting after headnote 3 the following new headnote:

"4. Picture tubes imported in combination with, or incorporated into, other articles are to be classified in items 687.35 through 687.44, inclusive, unless they are—

"(i) incorporated into complete television receivers, as defined in headnote 3;

"(ii) incorporated into fully assembled units such as word processors, ADP terminals, or similar articles;

"(iii) put up in kits containing all the parts necessary for assembly into complete television receivers, as defined in headnote 3; or

"(iv) put up in kits containing all the parts necessary for assembly into fully assembled units such as word processors, ADP terminals, or similar articles.".

(b) TEMPORARY TREATMENT.—

(1) Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.16	Television picture tubes, color, having a video display diagonal of less than 12 inches (provided for in item 687.35, part 5, schedule 6)	Free		No change	On or before 12/31/90	".

(2) Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.19	Television picture tubes, color, having a video display diagonal of 30 inches and over (provided for in item 687.35, part 5, schedule 6)	Free		No change	On or before 9/30/88	".

SEC. 1720. CASEIN.

(a) HUMAN FOOD AND ANIMAL FEED USE.—Subpart D of part 4 of schedule 1 is amended by adding at the end thereof the following new items with the superior heading having the same degree of indentation as the article description in item 118.45:

"		Casein, caseinates, and dried milk:					
	118.50	Casein	Free			Free	
	118.55	Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported	1.3¢ per lb.	Free (A,E,I)		5.5¢ per lb.	
	118.60	Other	0.2¢ per lb.	Free (A,E,I)		5.5¢ per lb.	".

(b) INDUSTRIAL USE.—Subpart B of part 13 of schedule 4 is amended by striking out items 493.12, 493.14, and 493.17 and the superior heading thereto.

SEC. 1721. TARIFF TREATMENT OF CERTAIN TYPES OF PLYWOOD.

Headnote 1 of part 3 of schedule 2 is amended—

(1) in paragraph (b) by inserting immediately before the semicolon at the end thereof the following: "or any edge of which has been tongued, grooved, lapped, or otherwise worked";

(2) in paragraph (c) by inserting immediately before the semicolon at the end thereof the following: "or any edge of which has been tongued, grooved, lapped, or otherwise worked"; and

(3) in paragraph (e) by inserting before "chiefly" the following: "other than plywood, wood-veneer panels, or cellular panels,".

SEC. 1722. IMPORTATION OF FURSKINS.

Headnote 4 to subpart B of part 5 of schedule 1 is repealed.

SEC. 1723. GRAPEFRUIT.

Subpart A of part 12 of schedule 1 is amended—

(1) by inserting after item 165.29 the following new items with a superior heading having the same degree of indentation as item 165.25:

"		Grapefruit:					
	165.31	Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree)	20¢ per gal.	Free (E)		70¢ per gal.	
	165.34	Other	35¢ per gal.	Free (E)		70¢ per gal.	";

and

(2) by redesignating items 165.32 and 165.36 as items 165.37 and 165.38, respectively.

SEC. 1724. SILICONE RESINS AND MATERIALS.

Part 4 of schedule 4 is amended—

(1) by amending subpart A—

(A) by striking out "provided for in part 1C" in headnote 1 and inserting ", other than silicones, provided for in part 1", and

(B) by amending headnote 2 to read as follows:

"2. (a) For purposes of this subpart, the term 'synthetic plastics materials'—

"(i) embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer may have been added; and

"(ii) includes silicones (including fluids, resins, elastomers, and copolymers) whether or not such materials are solid in the finished articles.

"(b) The products referred to in subdivision (a) contain as an essential ingredient an organic substance of high molecular weight; and, except as provided in subdivision (a)(ii), are capable, at some stage during processing into finished articles, of being molded or shaped by flow and are solid in the finished article. The term includes, but is not limited to, such products derived from esters of acrylic or methacrylic acid; vinyl acetate, vinyl chloride resins, polyvinyl alcohol, acetals, butyral, formal resins, polyvinyl ether and ester resins, and polyvinylidene chloride resins; urea and amino resins; polyethylene, polypropylene, and other polyalkene resins; siloxanes, silicones, and other organo-silicon resins; alkyd, acrylonitrile, allyl, and formaldehyde resins, and cellulosic plastics materials. These synthetic plastics materials may be in solid, semi-solid, or liquid condition such as flakes, powders, pellets, granules, solutions, emulsions, and other basic crude forms not further processed.",

(C) by inserting after item 445.54 the following new item with the article description having the same degree of indentation as the article description for item 445.54:

"	445.55	Silicone resins and materials	3% ad val.	Free (A, E, I)		25% ad val.	",

and

(D) by redesignating item 445.56 as item 445.60; and

(2) by amending headnote 2 to subpart B by adding at the end thereof the following:

"(c) For purposes of the Tariff Schedules, the term 'rubber' does not include silicones.".

Subpart B—Temporary Changes in Tariff Treatment

SEC. 1731. COLOR COUPLERS AND COUPLER INTERMEDIATES.

Subpart B of part 1 of the Appendix is amended—

(1) by inserting ", but excluding 6,7-dihydroxy-2- naphthalene sulfonic acid sodium salt provided for in item 403.57," after "schedule 4" and before the parenthesis in item 907.10; and

(2) by striking out "9/30/85" in each of items 907.10 and 907.12 and inserting in lieu thereof "12/31/90".

SEC. 1732. POTASSIUM 4-SULFOBENZOATE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.26	p-Sulfobenzoic acid, potassium salt (provided for in item 404.28, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1733. 2,2'-OXAMIDOBIS[ETHYL-3-(3,5-DI-TERT-BUTYL-4-HYDROXYPHENYL)PROPIONATE].

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following item:

"	907.09	2,2'-Oxamidobis-[ethyl-3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionate] (provided for in item 405.34, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1734. 2,4-DICHLORO-5-SULFAMOYLBENZOIC ACID.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.48	2,4-Dichloro-5-sulfamoylbenzoic acid (provided for in item 406.56, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1735. DERIVATIVES OF N-[4-(2-HYDROXY-3-PHENOXYPROPOXY)PHENYL]ACETAMIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.11	Mixtures containing derivatives of N-[4-(2-hydroxy-3-phenoxypro-poxy)phenyl] acetamide (provided for in item 407.19, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1736. CERTAIN KNITWEAR FABRICATED IN GUAM.

(a) IN GENERAL.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	905.45	Sweaters that— (i) do not contain foreign materials in excess of the percentage of total value limitation contained in general headnote 3(a), and (ii) are assembled in Guam, exclusively by United States citizens, nationals, or resident aliens, by joining together (by completely sewing, looping, linking, or other means of attaching) at least 5 otherwise completed major knit-to-shape component parts of foreign origin, if entered before the aggregate quantity of such sweaters that is entered during any 12-month period after October 31, 1985, exceeds the duty-free quantity for that period	Free			On or before 10/31/92	"

(b) DUTY-FREE QUANTITY.—The headnotes to subpart B of part 1 of the Appendix are amended by adding at the end thereof the following new headnote:

"3. For purposes of item 905.45, the term 'duty-free quantity' means—

"(a) for the 12-month period ending October 31, 1986, 161,600 dozen; and

"(b) for any 12-month period thereafter, an amount equal to 101 percent of the duty-free quantity for the preceding 12-month period.".

SEC. 1737. 3,5-DINITRO-O-TOLUAMIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.42	3,5-Dinitro-o-toluamide (provided for in item 411.95, part 1C, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1738. SECONDARY-BUTYL CHLORIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.55	Secondary-butyl chloride (provided for in item 429.47, part 2D, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1739. CERTAIN NONBENZENOID VINYL ACETATE-VINYL CHLORIDE-ETHYLENE TERPOLYMERS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following item:

"	907.83	Nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate (provided for in item 445.48, part 4A, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1740. DUTY-FREE ENTRY OF PERSONAL EFFECTS AND EQUIPMENT OF PARTICIPANTS AND OFFICIALS INVOLVED IN THE 10TH PAN AMERICAN GAMES.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	915.20	Personal effects of aliens who are participants in or officials of the Tenth Pan American Games, or who are accredited members of delegations thereto, or who are members of the immediate families of any of the foregoing persons, or who are their servants; equipment for use in connection with such games; and other related articles as prescribed in regulations issued by the Secretary of the Treasury	Free		Free	On or before 9/30/87		".

SEC. 1741. CARDING AND SPINNING MACHINES.

(a) IN GENERAL.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.03	Carding and spinning machines specially designed for wool, other than machines specially designed for the manufacture of combed wool (worsted) yarns (provided for in item 670.04, part 4E, schedule 6)	Free		No change	On or before 12/31/90		".

(b) PARTS.—The headnote to subpart E of part 4 of schedule 6 is amended by striking out "item 912.04" each place it appears and inserting in lieu thereof "item 912.03 or 912.04".

SEC. 1742. DICOFOL AND CERTAIN MIXTURES.

(a) DICOFOL.—Item 907.15 of the Appendix is amended to read as follows:

"	907.15	1,1-Bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) (provided for in item 408.28, part 1C, schedule 4)	Free		No change	On or before 12/31/90		".

(b) MIXTURES OF DICOFOL AND APPLICATION ADJUVANTS.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new items:

"	907.27	Mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants (provided for in item 408.36, part 1C, schedule 4)	Free		No change	On or before 12/31/90		".

SEC. 1743. SILK YARN.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	905.25	Yarns of silk (provided for in item 308.51, part 1D, schedule 3)	Free		No change	On or before 12/31/90		".

SEC. 1744. TERFENADONE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.48	1-(4-(1,1-Dimethylethyl)-phenyl-4-(hydroxydiphenylmethyl-1-piperidinyl)-1-butanone (provided for in item 406.42, part 1B, schedule 4)	Free		No change	On or before 12/31/90		".

SEC. 1745. FLUAZIFOP-P-BUTYL.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.49	Butyl 2-[4-(5-trifluoromethyl-2-pryidinyloxy)-phenoxy] propanoate (provided for in item 408.23, part 1C, schedule 4)	Free		No change	On or before 12/31/90		".

SEC. 1746. PARTS OF INDIRECT PROCESS ELECTROSTATIC COPYING MACHINES.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.18	Parts, not including photoreceptors or assemblies containing photoreceptors, of indirect process electrostatic copying machines, which machines reproduce the original image onto the copy material by electrostatic transference to and from an intermediate (provided for in item 676.56, part 4G, schedule 6)	Free		No change	On or before 12/31/90		".

SEC. 1747. EXTRACORPOREAL SHOCK WAVE LITHOTRIPTERS IMPORTED BY NONPROFIT INSTITUTIONS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.24	Extracorporeal shock wave lithotripters imported by nonprofit hospitals and research or educational institutions (provided for in item 709.17, part 2B, schedule 7)	Free		No change	On or before 12/31/87		".

SEC. 1748. TRANSPARENT PLASTIC SHEETING.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	915.10	Transparent plastic sheeting containing 30% or more of lead, by weight (provided for in item 774.58, part 12D, schedule 7)	Free		No change	On or before 12/31/90	"

SEC. 1749. DOLL WIG YARNS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	905.30	Grouped filaments and yarns, not textured, in continuous form, colored, of nylon or modacrylic, whether or not curled of not less than 20 denier per filament, to be used in the manufacture of wigs for dolls (provided for in item 309.32 and 309.33, part 1E, schedule 3, or item 389.62, part 7B, schedule 3)	Free		No change	On or before 12/31/90	"

SEC. 1750. 1-(3-SULFOPROPYL) PYRIDINIUM HYDROXIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following item:

"	907.97	1-(3-Sulfopropyl)-pyridiniumhydroxide (provided for in item 406.42, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1751. POLYVINYLBENZYLTRIMETHYLAMMONIUM CHLORIDE (CHOLESTYRAMINE RESIN USP).

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.30	Cross-linked polyvinyl-benzyltrimethylam-monium chloride (cholestyramine resin USP) (provided for in item 412.71, part 1C, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1752. METHYLENE BLUE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.81	3,7-Bis-(dimethylamino)-phenazathionium chloride (methylene blue) (provided for in item 409.74, part 1C, schedule 4	Free		No change	On or before 12/31/90	"

SEC. 1753. 3-AMINO-3-METHYL-1-BUTYNE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.53	3-Amino-3-methyl-1-butyne (provided for in item 425.52, part 2D, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1754. DICYCLOHEXYLBENZOTHIAZYLSULFENAMIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.45	Dicyclohexylbenzothiazylsulfenamide (provided for in item 406.39, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1755. D-6-METHOXY-α-METHYL-2-NAPHTHALENEACETIC ACID AND ITS SODIUM SALT.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.39	d-6-Methoxy-α-methyl-2-naphthaleneacetic acid and its sodium salt (provided for in item 412.22, part 1C, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1756. SUSPENSION OF DUTIES ON JACQUARD CARDS AND JACQUARD HEADS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.46	Jacquard cards and jacquard heads for power-driven weaving machines, and parts thereof (provided for in items 670.56 and 670.74, respectively, part 4E, schedule 6)	Free		No change	On or before 12/31/90	"

SEC. 1757. 2,2-BIS(4-CYANATOPHENYL).

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.44	2,2-Bis(4-cyanatophenyl) (provided for in item 405.76, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1758. PHENYLMETHYLAMINOPYRAZOLE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.47	Aminomethylphenylpyrazole (Phenylmethylaminopyrazole) (provided for in item 406.36, part 1B, schedule 4)..	Free		No change	On or before 12/31/90	"

SEC. 1759. BENZETHONIUM CHLORIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.52	Benzethonium chloride (provided for in item 408.32, part 1C, schedule 4).....	Free		No change	On or before 12/31/90	"

SEC. 1760. MANEB, ZINEB, MANCOZEB, AND METIRAM.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.60	Maneb, zineb, mancozeb, and metiram (provided for in item 432.15, part 2E, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1761. METALDEHYDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.56	Metaldehyde (provided for in item 427.58, part 2D, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1762. PARALDEHYDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.57	Paraldehyde, USP grade (provided for in item 439.50, part 3C, schedule 4).....	Free		No change	On or before 12/31/90	"

SEC. 1763. CYCLOSPORINE.

Subpart B of part 1 of the Appendix is amended by inserting the following item:

"	907.78	Cyclosporine (provided for in item 439.30, part 3C, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1764. TEMPORARY REDUCTION OF DUTIES ON GLASS INNERS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	909.35	Glass inners designed for vacuum flasks or for other vacuum vessels (provided for in items 545.31, 545.34, 545.35, and 545.37, part 3C, schedule 5)	9% ad val.	3.6% ad val. (I) Free (A,E)	55% ad val.	On or before 12/31/90	"

SEC. 1765. BENZENOID DYE INTERMEDIATES.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following items:

"	907.84	p-Toluenesulfonyl chloride (provided for in item 403.05, part 1B, schedule 4).....	Free		No change	On or before 12/31/90	
	907.85	6-Hydroxy-2-naphthalenesulfonic acid; 6-Hydroxy-2-naphthalenesulfonic acid, sodium salt; 6-Hydroxy-2-napthalenesulfonic acid, potassium salt; and 6-Hydroxy-2-napthalenesulfonic acid, ammonium salt (provided for in item 403.57, part 1B, schedule 4)	Free		No change	On or before 12/31/90	
	907.86	2,6-Dichloro-benzaldehyde (provided for in item 403.81 part 1B, schedule 4)	Free		No change	On or before 12/31/90	
	907.87	8-Amino-1-naphthalenesulfonic acid and its salts (provided for in item 404.52, part 1B, schedule 4).....	Free		No change	On or before 12/31/90	
	907.88	5-Amino-2-(p-amino-anilino) benzene-sulfonic acid (provided for in item 404.84, part 1B, schedule 4).....	Free		No change	On or before 12/31/90	
	907.89	1-Amino-2,4-dibromo-anthraquinone; and α,α,α-Trifluoro-o-toluidine (provided for in item 404.88, part 1B, schedule 4)	Free		No change	On or before 12/31/90	

907.90	1-Amino-8-hydroxy-3, 6-naphthalene-disulfonic acid; 4-Amino-5-hydroxy-2,7-naphthalene-disulfonic acid, monosodium salt (H acid, monosodium salt); and 2-Amino-5-nitrophenol (provided for in item 404.92, part 1B, schedule 4)	Free		No change	On or before 12/31/90	
907.91	1-Amino-4-bromo-2-anthraquinone-sulfonic acid (Bromamine acid); 1-Amino-4-bromo-2-anthraquinone-sulfonic acid (Bromamine acid), sodium salt; 6-Amino-4-hydroxy-2-naphthalene-sulfonic acid (Gamma acid); 3,3'-Dimethoxy-benzidine (o-Dianisidine); 3,3'-Dimethoxy-benzidinedihydrochloride (o-Dianisidine dihydrochloride); and4-Methoxyaniline-2-sulfonic acid (provided for in item 405.07, part1B, schedule 4)	Free		No change	On or before 12/31/90	
907.92	N-(7-Hydroxy-1-naphthyl)acetamide (provided for in item 405.28, part 1B, schedule 4)	Free		No change	On or before 12/31/90	
907.93	N,N-Bis(2-cyanoethyl)aniline (provided for in item 405.60, part 1B, schedule 4)	Free		No change	On or before 12/31/90	
907.94	6-(3-Methyl-5-oxo-1-pyrazolyl)-1,3-naphthalene-disulfonic acid (Amino-J-pyrazolone) (CAS No. 7277-87-4); and 3-Methyl-1-phenyl-5-pyrazolone (Methyl-phenyl-pyrazolone) (provided for in item 406.36, part 1B, schedule 4)	Free		No change	On or before 12/31/90	
907.95	2-Amino-N-ethyl-benzenesulfonanilide (provided for in item 406.49, part 1B, schedule 4)	Free		No change	On or before 12/31/90	
907.96	m-Sulfamino-pyrazolone-m-Sulfamido-phenylmethyl-pyrazolone) (provided for in item 406.56, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1766. TUNGSTEN ORE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

" 911.96	Tungsten ore (provided for in item 601.54, part 1, schedule 6)	Free		No change	On or before 12/31/90	".

SEC. 1767. CHLOR AMINO BASE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

" 907.07	4-Chloro-2,5-dimethoxy aniline (CAS No. 6358-64-1) (provided for in item 405.01, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1768. NITRO SULFON B.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

" 908.01	2-[(3-Nitrophenyl)-sulfonyl]-ethanol (CAS No. 41687-30-3) (provided for in item 406.00, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1769. 4-CHLORO-2-NITRO ANILINE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new items:

" 908.02	4-Chloro-2-nitro aniline (CAS No. 89-63-4) (provided for in item 404.88, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1770. AMINO SULFON BR.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

" 908.03	3-(4'-aminobenz-amido) phenyl-beta-hydroxy-ethyl sulfone (CAS No. 20241-68-3) (provided for in item 406.00, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1771. ACET QUINONE BASE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

" 908.04	2,5-Dimethoxy-acetanilide (CAS No. 3467-59-2) (provided for in item 405.34, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1772. DIAMINO PHENETOLE SULFATE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.05	3,4-Diamino phenetole dihydrogen sulfate (CAS No. 85137-09-3) (provided for in item 405.09, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1773. CERTAIN MIXTURES OF CROSS-LINKED SODIUM POLYACRYLATE POLYMERS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following item:

"	907.72	Mixtures of two or more organic compounds containing one or more cross-linked sodium polyacrylate polymers (provided for in item 430.20, part 2D, schedule 4)..	Free		No change	On or before 10/31/87	"

SEC. 1774. N-ETHYL-O-TOLUENESULFONAMIDE AND N-ETHYL-P-TOLUENESULFONAMIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.07	N-Ethyl-o-toluene-sulfonamide, and N-Ethyl-p-toluene-sulfonamide (provided for in item 409.34, part 1C, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1775. SETHOXYDIM.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.36	Mixtures of 2-[1-(ethoxyimino)-butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy- 2-cyclohexen-1-one (sethoxydim) and application adjuvants (provided for in item 407.19, part 1B, or item 430.20, part 2D of schedule 4)....	Free		No change	On or before 12/31/90	"

SEC. 1776. 3-ETHYLAMINO-P-CRESOL.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.34	3-Ethylamino-p-cresol (provided for in item 404.96, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1777. ROSACHLORIDE LUMPS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.11	1-Amino-2-chloro-4-hydroxyanthraquinone (provided for in item 405.07, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1778. C-AMINES.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.59	2-Amino-5-chloro-4-methylbenzenesulfonic acid; and 2-amino-5-chloro-4-ethylbenzenesulfonic acid (provided for in item 404.88 and 404.90, respectively, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1779. DIAMINO IMID SP.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.60	4,11-Diamino-1H-naphth[2,3-f]isoindole-1,3,5,10(2H)-tetrone (CAS No. 128-81-4) (provided for in item 406.42, part 1B, schedlule 4)	Free		No change	On or before 12/31/90	"

SEC. 1780. CERTAIN STUFFED TOY FIGURES.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.32	Stuffed or filled toy figures of animate objects (except dolls), not having a spring mechanism and not exceeding 25 inches in either length, width, or height (provided for in items 737.30 and 737.40, part 5E, schedule 7)	Free		No change	On or before 12/31/90	"

SEC. 1781. KITCHENWARE OF TRANSPARENT, NONGLAZED GLASS CERAMICS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	909.15	Kitchenware of glass-ceramics, nonglazed, greater than 75 percent by volume crystalline, containing lithium aluminosilicate, having a linear coefficient of expansion not exceeding 10×10^{-7} per Kelvin within a temperature range of 0°C to 300°C, transparent, haze-free, exhibiting transmittances of infrared radiations in excess of 75 percent at a wavelength of 2.5 microns when measured on a sample 3 mm in thickness, and containing beta-quartz solid solution as the predominant crystal phase (provided for in item 534.97, part 2C, schedule 5)	Free		No change	On or before 12/31/90	"

SEC. 1782. HOSIERY KNITTING MACHINES AND NEEDLES.

(a) IN GENERAL.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new items:

"	912.28	Needles for knitting machines (provided for in items 670.58 and 670.62, part 4E, schedule 6)	Free		No change	On or before 12/31/90	
"	912.29	Hosiery knitting machines, single cylinder fine gauge and all double cylinder (provided for in items 670.16 and 670.18, part 4E, schedule 6)	Free		No change	On or before 12/31/90	"

(b) REPEAL.—Items 912.08 and 912.09 are repealed.

SEC. 1783. CERTAIN BICYCLE PARTS.

(a) BICYCLE TIRES AND TUBES.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.01	Bicycle tires and tubes and rim strips, the foregoing of rubber or plastics (provided for in item 732.42, part 5C, schedule 7, and items 772.48 and 772.57, part 12C, schedule 7)	Free		No change	On or before 12/31/90	"

(b) GENERATOR LIGHTING SETS.—Item 912.05 of the Appendix is amended by striking out "6/30/86" and inserting in lieu thereof "12/31/90".

(c) BICYCLE CHAINS.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.06	Bicycle chains (provided for in items 652.13 and 652.15, part 3F, schedule 6)	Free		No change	On or before 12/31/90	"

(d) OTHER BICYCLE PARTS.—Item 912.10 of the Appendix is amended—

(1) by inserting "front and rear derailleurs, shift levers, cables and casings for derailleurs," immediately after "drum brakes,";

(2) by striking out "multiple free wheel sprockets" and inserting in lieu thereof "free wheel sprockets",

(3) by inserting "and" after "frame lugs,";

(4) by striking out ", including cable or inner wire for caliper brakes and casing therefor, whether or not cut to length, and parts of bicycles consisting of sets of steel tubing cut to exact length and each set having the number of tubes needed for the assembly (with other parts) into the frame and fork of one bicycle", and

(5) by striking out "6/30/86" and inserting in lieu thereof "12/31/90".

(e) CALIPER BRAKE CABLE OR INNER WIRE AND CASING.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.12	Cable or inner wire for caliper brakes and casing therefor, whether or not cut to length (provided for in items 642.08, 642.11, 642.14, 642.16, 642.18, 642.19, 642.23, and 657.25, parts 3B and 3G, schedule 6, and items 771.55 and 772.65, parts 12B and 12C, schedule 7)	Free		No change	On or before 12/31/90	"

(f) EXCEPTION TO CUSTOMS EXEMPTION APPLICABLE TO FOREIGN TRADE ZONES.—Section 3(b) of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c(b)), is amended by striking out "June 30, 1986" and inserting in lieu thereof "January 1, 1991".

SEC. 1784. 1,2-DIMETHYL-3,5-DIPHENYLPYRAZOLIUM METHYL SULFATE (DIFENZOQUAT METHYL SULFATE).

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.24	1,2-Dimethyl-3,5-diphenylpyrazolium methyl sulfate (difenzoquat methyl sulfate) (provided for in item 408.19, part 1C, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1785. TRIALLATE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.64	S-(2, 3, 3'-trichlorallyl)-diisopropyl-thiocarbamate (provided for in item 425.36, part 2D, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1786. m-NITRO-p-ANISIDINE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.56	m-Nitro-p-anisidine (provided for in item 405.09, part 1B, schedule 4)	Free		No change	On or before 12/31/90	"

SEC. 1787. DINOCAP AND MIXTURES OF DINOCAP AND MANCOZEB.

(a) DINOCAP AND APPLICATION ADJUVANTS.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new items:

"	907.98	Dinocap (provided for in item 408.16, part 1C, schedule 4)	Free		No change	On or before 12/31/90	

	907.99	Mixtures of dinocap and application adjuvants (provided for in item 408.38, part 1C, schedule 4)	Free		No change	On or before 12/31/90	".

(b) MIXTURES OF DINOCAP AND MANCOZEB.—Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.28	Mixtures of mancozeb and dinocap (provided for in item 408.38, part 1C, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1788. μ-NITRO-O-ANISIDINE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.35	m-Nitro-o-anisidine (provided for in item 405.07, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1789. π-NITRO-O-TOLUIDINE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.37	p-Nitro-o-toluidine (provided for in item 404.88, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1790. PHENYLCARBETHOXYPYRAZOLONE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	906.31	Phenylcarbethoxy- pyrazolone (provided for in item 406.39, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1791. ρ-NITRO-O-ANISIDINE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.14	p-Nitro-o-anisidine (provided for in item 405.07, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1792. CARBODIIMIDES.

(a) Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.70	Bis(o-tolyl) carbodiimide; 2,2',6,6'-Tetraisopropyldiphenyl carbodiimide; Poly[nitrilo-methanete-traryl-nitrilo [2,4,6-tris(1,-methylethyl)-1,3 phenylene]], 2,6-bis(1-methylethyl) phenyl]-omega-[[[2,6-bis(1-methylethyl) phenyl]amino] methylene]amino]; and Benezene, 2,4-diisocyanato-1,3,5-tris(1-methylethyl)-homopolymer (provided for in item 405.53, part 1B, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1793. TRIETHYLENE GLYCOL DICHLORIDE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.73	Triethylene glycol dichloride (provided for in item 428.47, part 2D, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1794. MIXTURES OF 5-CHLORO-2-METHYL-4-ISOTHIAZOLIN-3-ONE, 2-METHYL-4-ISOTHIAZOLIN-3-ONE, MAGNESIUM CHLORIDE, STABILIZERS AND APPLICATION ADJUVANTS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.16	Mixtures of 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride, stabilizers and application adjuvants (provided for in item 432.28, part 2E, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1795. 2-N-OCTYL-4-ISOTHIAZOLIN-3-ONE, AND ON MIXTURES OF 2-N-OCTYL-4-ISOTHIAZOLIN-3-ONE AND APPLICATION ADJUVANTS.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.17	2-n-Octyl-4-isothiazolin-3-one, and mixtures of 2-n-octyl-4-isothiazolin-3-one and application adjuvants (provided in items 425.52 and 430.20, part 2D, schedule 4)	Free		No change	On or before 12/31/90	".

SEC. 1796. WEAVING MACHINES FOR FABRICS IN EXCESS OF 16 FEET WIDTH.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	912.48	Power-driven weaving machines for weaving fabrics more than sixteen feet in width, and parts thereof (provided for in item 670.14 and 670.74, part 4E, schedule 6)	Free		No change	On or before 12/31/90		"

SEC. 1797. BARBITURIC ACID.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.50	Barbituric acid (provided for in item 437.36, part 3B, schedule 4)	Free		No change	On or before 12/31/90		"

SEC. 1798. 3-METHYL-5-PYRAZOLONE.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	907.46	3-Methyl-5-pyrazolone (provided for in item 425.52, part 2D, schedule 4)	Free		No change	On or before 12/31/90		"

SEC. 1799. 3-METHYL-1-(P-TOLYL)-2-PYRAZOLIN-5-ONE (P-TOLYL METHYL PYRAZOLONE).

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.15	3-Methyl-1-(p-tolyl)-2-pyrazolin-5-one (p-Tolyl methyl pyrazolone) (provided for in item 406.36, part 1B, schedule 4)	Free		No change	On or before 12/31/90		"

SEC. 1800. CERTAIN OFFSET PRINTING PRESSES.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	911.93	Offset printing presses of the sheet-fed type weighing 3,500 pounds or more (provided for in item 668.21, part 4D, schedule 6)	No change		10% ad val.	On or before 12/31/90		"

SEC. 1801. FROZEN CRANBERRIES.

Subpart B of part 1 of the Appendix to the Tariff Schedules of the United States is amended by inserting in numerical sequence the following item:

"	903.63	Cranberries, frozen (provided for in item 146.71, part 9B, schedule 1)	Free		No change	On or before 12/31/90		"

SEC. 1802. μ-HYDROXYBENZOIC ACID.

Subpart B of part 1 of the Appendix is amended by inserting in numerical sequence the following new item:

"	908.18	m-Hydroxybenzoic acid (provided for in item 404.40, part 1B, schedule 4)	Free		No change	On or before 12/31/90		"

SEC. 1803. CERTAIN BENZENOID CHEMICALS.

Subpart B of part 1 of the Appendix is amended—

(1) by inserting in numerical sequence the following new item:

"	908.32	N1,N4,N4-Tris(2-hydroxyethyl)-2-nitro-1,4-phenylenediamine; N1,N4-Dimethyl-N1-(2-hydroxyethyl)-3-nitro-1,4-phenylenediamine; N1,N4-Dimethyl-N1-(2,3-dihydroxypropyl)-3-nitro-1,4-phenylenediamine; and N1-(2-Hydroxyethyl)-3-nitro-1,4-phenylenediamine (provided for in item 405.09, part 1B, schedule 4)	Free		No change	On or before 12/1/90		"

(2) by inserting in numerical sequence the following new item:

"	908.33	N1-(2-Hydroxyethyl)-2-nitro-1,4-phenylenediamine (provided for in item 405.07, part 1B, schedule 4)	Free		No change	On or before 12/1/90		"

and

(3) by inserting in numerical sequence the following new item:

"	908.34	2-Nitro-5-[(2,3-dihydroxy)propoxy]-N-methylaniline; 2-Nitro-5-(2-hydroxyethoxy)-N-methylaniline; 4-[(2-Hydroxyethyl)amino]-3-nitrophenol; 4-(2-Hydroxyethoxy)-1,3-phenylenediamine dihydrochloride; and 3-Methoxy-4-[(2-hydroxyethyl)-amino] nitrobenzene (provided for in item 405.09, part 1B, schedule 4)	Free		No change	On or before 12/1/90		"

SEC. 1804. EXTENSION OF CERTAIN SUSPENSION PROVISIONS.

(a) PROVISIONS THAT EXPIRED BEFORE 1987.—Each of the following items are amended by striking out the date in the effective date column and inserting in lieu thereof "12/31/90":

(1) Item 903.65 (relating to cantaloupes).

(2) Items 905.10 and 905.11 (relating to certain wools).

(3) Items 906.10 and 906.12 (relating to needlecraft display models).

(4) Item 907.01 (relating to triphenyl phosphate).

(5) Item 907.14 (relating to isomeric mixtures of ethylbiphenyl).

(6) Item 907.17 (relating to sulfapyridine).

(7) Item 911.25 (relating to synthetic rutile).

(8) Item 911.95 (relating to certain clock radios).

(9) Item 912.07 (relating to machines designed for heat-set, stretch texturing of continuous man-made fibers).

(10) Item 912.20 (relating to certain small toys).

(11) Items 912.30, 912.34, and 912.36 (relating to stuffed dolls, certain toy figures, and skins thereof).

(12) Item 912.45 (relating to umbrella frames).

(13) Item 903.60 (relating to mixtures of mashed or macerated hot red peppers and salt).

(b) PROVISIONS EXPIRING IN 1987 OR LATER.—Each of the following items is amended by striking out the date in the effective date column and inserting in lieu thereof "12/31/90":

(1) Items 903.70 and 903.80 (relating to crude feathers and down).

(2) Item 905.50 (relating to surgical gowns).

(3) Item 906.50 (relating to diphenylguanidine and di-ortho-tolylguanidine).

(4) Item 906.57 (relating to m-toluic acid).

(5) Item 907.13 (relating to menthol feedstocks).

(6) Item 907.19 (relating to sulfathiazole).

(7) Item 907.21 (relating to flecainide acetate).

(8) Item 907.23 (relating to o-Benzyl-p-chlorophenol).

(9) Item 907.31 (relating to B-Naphthol).

(10) Item 907.32 (relating to 3,3'-Diaminobenzidine).

(11) Item 907.33 (relating to acetylsulfaguanidine).

(12) Item 907.34 (relating to 6-Amino-1-naphthol-3-sulfonic acid).

(13) Item 907.35 (relating to 2-(4-Aminophenyl)-6-methylbenzo-thiazole-7-sulfonic acid).

(14) Item 907.36 (relating to sulfamethazine).

(15) Item 907.37 (relating to sulfaguanidine).

(16) Item 907.38 (relating to sulfaquinoxaline and sulfanilamide).

(17) Item 907.63 (relating to nicotine resins).

(18) Item 907.79 (relating to iron-dextran complex).

(19) Item 909.01 (relating to natural graphite).

(20) Item 912.04 (relating to certain narrow weaving machines).

(21) Item 912.11 (relating to certain lace-braiding machines).

(22) Item 905.40 (relating to certain hovercraft skirts).

(23) Item 906.52 (relating to 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride and magnesium nitrate).

(c) TECHNICAL AMENDMENTS.—

(1) Item 906.10 is amended—

(A) by striking out "365.78" and inserting in lieu thereof "365.66",

(B) by striking out "365.86" and inserting in lieu thereof "365.89",

(C) by striking out "367.34" and inserting in lieu thereof "367.32",

(D) by striking out "367.60" and inserting in lieu thereof "367.63",

(E) by striking out "386.13" and inserting in lieu thereof "386.12", and

(F) by striking out "386.50" and inserting in lieu thereof "386.53".

(2) Item 906.12 is amended by striking out "383.03, 383.08, 383.20, and 383.50" and inserting in lieu thereof "384.04, 384.09, 384.22, and 384.52".

(3) Item 907.14 is amended by striking out "407.16" and inserting in lieu thereof "407.19".

(4) Item 912.45 is amended by striking out "751.20" and inserting in lieu thereof "751.21".

(5) Item 907.21 is amended by striking out "412.12" and inserting in lieu thereof "412.11".

Subpart C—Effective Dates

SEC. 1831. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this part shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after September 30, 1988.

(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(1) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer after September 30, 1988, and before April 1, 1989, any entry—

(A) which was made after the applicable date and before October 1, 1988, and

(B) with respect to which there would have been no duty or a lesser duty if any amendment made by—

(i) section 1716, 1717, 1719(b)(2), 1731, 1736, 1740, 1742(a), 1747, or 1773,

(ii) subsection (a), (b), (d), or (e) of section 1783, or

(iii) section 1804 (other than section 1804(a)(7) and paragraphs (2) and (10) of section 1804(b)),

applied to such entry,

shall be liquidated or reliquidated as though such amendment applied to such entry.

(2) For purposes of this section—

(A) The term "applicable date" means—

(i) if the amendment described in paragraph (1)(B) is made by section 1717 or 1747, December 31, 1982,

(ii) if such amendment is made by section 1804(a)(1), May 15, 1985,

(iii) if such amendment is made by paragraph (2), (3), (5), or (13) of section 1804(a), June 30, 1985,

(iv) if such amendment is made by section 1773, July 1, 1985,

(v) if such amendment is made by section 1731, 1742(a), or 1804(a)(4), September 30, 1985,

(vi) if such amendment is made by section 1736, October 31, 1985,

(vii) if such amendment is made by section 1716 or by paragraph (6), (9), or (11) of section 1804(a), December 31, 1985,

(viii) if such amendment is made by section 1740, May 31, 1986,

(ix) if such amendment is made by subsection (b), (d), or (e) of section 1783, June 30, 1986,

(x) if such amendment is made by paragraph (8), (10), or (12) of section 1804(a), December 31, 1986,

(xi) if such amendment is made by section 1783(a) or 1804(b) (other than by paragraph (2) or (10) of section 1804(b)), December 31, 1987, or

(xii) if such amendment is made by section 1719(b)(2), the date that is 15 days after the date of enactment of this Act.

(B) The term "entry" includes any withdrawal from warehouse.

(c) HOSIERY KNITTING MACHINES AND NEEDLES.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer after September 30, 1988, and before April 1, 1989—

(1) any entry of an article described in item 912.08 of the Tariff Schedules of the United States (as in effect on September 30, 1985) that was made—

(A) after September 30, 1985, and

(B) before the date that is 15 days after the date of enactment of this Act,

shall be liquidated or reliquidated as though such entry had been made on September 30, 1985; and

(2) any entry of an article described in item 912.09 of such Schedules (as in effect on June 30, 1985) that was made—

(A) after June 30, 1985, and

(B) before the date that is 15 days after the date of enactment of this Act,

shall be liquidated or reliquidated as though such entry had been made on June 30, 1985.

PART II—MISCELLANEOUS PROVISIONS

SEC. 1841. CERTAIN STRUCTURES AND PARTS USED IN THE W.M. KECK OBSERVATORY PROJECT, MAUNA KEA, HAWAII.

The Secretary of the Treasury is authorized and directed to admit free of duty after September 30, 1988, the following articles for the use of the California Association for Research in Astronomy in the construction of the optical telescope for the W.M. Keck Observatory Project, Mauna Kea, Hawaii:

(1) The telescope structure.

(2) The observatory domes, produced by Brittain Steel, Ltd., of Vancouver, British Columbia, Canada.

(3) The primary mirror blanks, produced by the Schott Glassworks, Frankfurt, Federal Republic of Germany.

If the liquidation of the entry of any such article has become final before October 1, 1988, the entry shall, notwithstanding any other provision of law, be reliquidated on October 1, 1988, in accordance with the provisions of this section and the appropriate refund of duty made at the time of such reliquidation.

SEC. 1842. RELIQUIDATION OF CERTAIN ENTRIES AND REFUND OF ANTIDUMPING DUTIES.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the entries listed in subsection (b) shall be reliquidated on October 1, 1988, without liability of the importer of record for antidumping duties, and if any such duty has been paid, either through liquidation or compromise under section 617 of the Tariff Act of 1930 (19 U.S.C. 1617), refund thereof shall be made on October 1, 1988.

(b) SPECIFIC ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number:	Date of Entry:
144549	March 26, 1976
150297	April 27, 1976
152729	May 11, 1976
156068	May 26, 1976
161653	June 23, 1976

Entry Number:	Date of Entry:
168759	July 30, 1976
173393	August 25, 1976
175173	September 3, 1976
178811	September 23, 1976
108842	November 18, 1976
113000	December 9, 1976
115229	December 21, 1976
120070	January 17, 1977
120908	January 20, 1977
121403	January 24, 1977
130005	March 10, 1977.

SEC. 1843. RELIQUIDATION OF CERTAIN TUBULAR TIN PRODUCTS.

Notwithstanding any provision of the Tariff Act of 1930 or any other provision of the law to the contrary, the Secretary of the Treasury shall reliquidate on or after October 1, 1988, as free of duty under item 911.12 of the Appendix to the Tariff Schedules of the United States, as in effect at the time of entry, the entries numbered 00329493 (dated March 16, 1979), 00329494 (dated March 13, 1979), 00329495 (dated March 28, 1979), and 00330003 (dated March 21, 1979), made at New York, and covering tubular tin products, if a certificate of actual use (remelt certificate) for the articles covered by the four entries is submitted to the United States Customs Service at the port of entry after September 30, 1988, and before April 1, 1989.

SEC. 1844. CERTAIN EXTRACORPOREAL SHOCK WAVE LITHOTRIPTER IMPORTED FOR USE IN HAWAII.

Nothwithstanding any other provision of law—

(1) the entry, or withdrawal from warehouse, for consumption in October 1986 of any extracorporeal shock wave lithotripter exclusively for use in the State of Hawaii shall be free of duty and, upon a request filed with the appropriate customs officer after September 30, 1988, and before April 1, 1989, shall be reliquidated in accordance with the provisions of this section, and

(2) the appropriate refund of any duties paid on such entry or withdrawal shall be made after September 30, 1988.

SEC. 1845. EXTENSION OF THE FILING PERIOD FOR RELIQUIDATION OF CERTAIN ENTRIES.

Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the customs officer concerned after September 30, 1988, and before April 1, 1989, the entry of any article described in item 687.70 of the Tariff Schedules of the United States which was made on or after March 1, 1985, and before November 6, 1986, shall be liquidated or reliquidated as though such entry had been made on November 6, 1986.

Subtitle H—Miscellaneous Customs, Trade, and Other Provisions

PART I—CUSTOMS PROVISIONS

SEC. 1901. ENFORCEMENT OF THE RESTRICTIONS AGAINST IMPORTED PORNOGRAPHY.

(a) IN GENERAL.—Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305) is amended as follows:

(1) The second paragraph of subsection (a) is designated as subsection (b) and the following side heading, appropriately indented, is inserted before "Upon" at the beginning of the paragraph: "(b) ENFORCEMENT PROCEDURES.—".

(2) The second sentence of subsection (b) (as redesignated by paragraph (1)) is amended to read as follows: "Upon the seizure of such book or matter, such customs officer shall transmit information thereof to the United States attorney of the district in which is situated either—

"(1) the office at which such seizure took place; or

"(2) the place to which such book or matter is addressed;

and the United States attorney shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized.".

(3) The following new subsections are added at the end thereof:

"(c) Notwithstanding the provisions of subsections (a) and (b), whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he may refer the matter to the United States attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than 30 days after the time the material is seized; except that no seizure or forfeiture shall be invalidated for delay if the claimant is responsible for extending the action beyond the allowable time limits or if proceedings are postponed pending the consideration of constitutional issues.

"(d) Upon motion of the United States, a court shall stay such civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

SEC. 1902. TARE ON CRUDE OIL AND PETROLEUM PRODUCTS.

(a) IN GENERAL.—Section 507 of the Tariff Act of 1930 (19 U.S.C. 1507) is amended—

(1) by striking out "The Secretary" and inserting in lieu thereof "(a) IN GENERAL.—The Secretary",

(2) by striking out "in no case shall there be" and inserting in lieu thereof "(except as otherwise provided in this section) there shall not be", and

(3) by adding at the end thereof the following new subsection:

"(b) CRUDE OIL AND PETROLEUM PRODUCTS.—In ascertaining tare on imports of crude oil, and on imports of petroleum products, allowance shall be made for all detectable moisture and impurities present in, or upon, the imported crude oil or petroleum products.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after October 1, 1987.

SEC. 1903. ELIGIBLE ARTICLES UNDER THE GENERALIZED SYSTEM OF PREFERENCES.

Section 503(c)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2463(c)(1)(B)) is amended to read as follows:

"(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,".

SEC. 1904. CUSTOMS BOND CANCELLATION STANDARDS.

Section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)) is amended by adding at the end thereof the following new sentence: "In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.".

SEC. 1905. CUSTOMS SERVICES AT PONTIAC/OAKLAND, MICHIGAN, AIRPORT.

Section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 586) is amended—

(1) by striking out "and" at the end of subsection (a)(1);

(2) by redesignating paragraph (2) of subsection (a) as paragraph (3); and

(3) by inserting after paragraph (1) of subsection (a) the following new paragraph:

"(2) the airport located at Pontiac/Oakland, Michigan, and"; and

(4) by striking out "20" in subsection (c).

SEC. 1906. SENSE OF CONGRESS REQUESTING THE PRESIDENT TO INSTRUCT THE SECRETARY OF THE TREASURY TO ENFORCE SECTION 307 OF THE TARIFF ACT OF 1930 WITHOUT DELAY.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) its February 1983 report to the Congress on forced labor in the Union of Soviet Socialist Republics, the Department of State confirmed that Soviet forced labor is used "to produce large amounts of primary and manufactured goods for both domestic and Western export markets", and that such labor is used as an integral part of Soviet national economy;

(2) the Central Intelligence Agency has compiled a list of over three dozen products made by Soviet forced labor and imported by the United States, and that items on the September 27, 1983 list include chemicals, gold, uranium, aluminum, wood products and glassware;

(3) the International Commission on Human Rights has concluded that the Soviet Union "continues the deplorable practice of forced labor in manufacturing and construction projects" and that prisoners "are forced to work under conditions of extreme hardship including malnutrition, inadequate shelter and clothing, and severe discipline";

(4) the Congress is on record as opposing forced labor, having enacted a prohibition (in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)) on the importation of goods made with such labor and having passed in the Ninety-eighth Congress by unanimous vote a resolution calling such practices morally reprehensible and calling upon the President to express to the Soviet Union the opposition of the United States to such policies;

(5) the prohibition enacted by the Congress declares that "goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited";

(6) there is ample knowledge of the Soviet forced labor system to require enforcement of the prohibition contained in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307); and

(7) the delay in enforcing the law brings into question the commitment of the United States to protest the inhumane treatment of prisoners in the Soviet Gulag, an estimated ten thousand of whom are political and religious prisoners according to the Department of State.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the President should express to the Soviet Union in the firmest possible terms the strong moral opposition of the United States to the slave labor policies of the Soviet Union by every means possible, including refusing to permit the importation into the United States of any products made in whole or in part by such labor.

(c) PRESIDENTIAL ACTION.—The President is hereby requested to instruct the Secretary of the Treasury to enforce section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) without delay.

SEC. 1907. IMPORT MARKING PROVISIONS.

(a) INCREASE IN PENALTY FOR VIOLATIONS OF COUNTRY-OF-ORIGIN MARKING REQUIREMENTS.—

(1) Section 304(h) of the Tariff Act of 1930 (19 U.S.C. 1304(h)) is amended to read as follows:

"(h) PENALTIES.—Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall—

"(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

"(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.".

(2)(A) The amendment made by paragraph (1) applies with respect to acts committed on or after the date of the enactment of this Act.

(B) The conviction of a person under section 304(h) of the Tariff Act of 1930 for an act committed before the date of the enactment of this Act shall be disregarded for purposes of applying paragraph (2) of such subsection (as added by the amendment made by paragraph (1) of this subsection.

(b) MARKING OF CONTAINERS OF IMPORTED MUSHROOMS.—Imported preserved mushrooms shall not be considered to be in compliance with section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) or any other law relating to the marking of imported articles unless the containers thereof indicate in English the country in which the mushrooms were grown.

(c) NATIVE-AMERICAN STYLE JEWELRY AND NATIVE-AMERICAN STYLE ARTS AND CRAFTS.—By no later than the date that is 1 year after the date of enactment of this Act, the Secretary of the Treasury shall prescribe and implement regulations under section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) which require, to the greatest extent possible, that all Native-American style jewelry and Native-American style arts and crafts that are imported into the United States have the English name of the country of origin of such jewelry or arts and crafts indelibly marked in a conspicuous place on such jewelry or arts and crafts by a permanent method of marking.

SEC. 1908. DUTY-FREE SALES ENTERPRISES.

(a) FINDINGS.—The Congress finds that—

(1) duty-free sales enterprises play a significant role in attracting international passengers to the United States and thereby their operations favorably affect our balance of payments;

(2) concession fees derived from the operations of authorized duty-free sales enterprises constitute an important source of revenue for the State, local and other governmental authorities that collect such fees;

(3) there is inadequate statutory and regulatory recognition of, and guidelines for the operation of, duty-free sales enterprises; and

(4) there is a need to encourage uniformity and consistency of regulation of duty-free sales enterprises.

(b) IN GENERAL.—Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) is amended to read as follows:

"(b) DUTY-FREE SALES ENTERPRISES.—

"(1) Duty-free sales enterprises may sell and deliver for export from the customs territory duty-free merchandise in accordance with this subsection and such regulations as the Secretary may prescribe to carry out this subsection.

"(2) A duty-free sales enterprise may be located anywhere within—

"(A) the same port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), from which a purchaser of duty-free merchandise departs the customs territory; or

"(B) 25 statute miles from the exit point through which the purchaser of duty-free merchandise will depart the customs territory.

"(3) Each duty-free sales enterprise—

"(A) shall establish procedures to provide reasonable assurance that duty-free merchandise sold by the enterprise will be exported from the customs territory;

"(B) if the duty-free sales enterprise is an airport store, shall establish and enforce, in accordance with such regulations as the Secretary may prescribe, restrictions on the sale of duty-free merchandise to any one individual to personal use quantities;

"(C) shall display in prominent places within its place of business notices which state clearly that any duty-free merchandise purchased from the enterprise—

"(i) has not been subject to any Federal duty or tax,

"(ii) if brought back into the customs territory, must be declared and is subject to Federal duty and tax; and

"(iii) is subject to the customs laws and regulation of any foreign country to which it is taken,

"(D) shall not be required to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate that the items were sold by a duty-free sales enterprise, unless the Secretary finds a pattern in which such items are being brought back into the customs territory without declaration;

"(E) may unpack merchandise into saleable units after it has been entered for warehouse and placed in a duty-free sales enterprise, without requirement of further permits; and

"(F) shall deliver duty-free merchandise—

"(i) in the case of a duty-free sales enterprise that is an airport store—

"(I) to the purchaser (or a family member or companion traveling with the purchaser) in an area that is within the airport and to which access to passengers is restricted to those departing from the customs territory,

"(II) to the purchaser (or a family member or companion traveling with the purchaser) at the exit point of a specific departing flight;

"(III) by placing the merchandise within the aircraft on which the purchaser will depart for carriage as passenger baggage; or

"(IV) if the duty-free sales enterprise has made a good faith effort to effect delivery for exportation through one of the methods described in subclause (I), (II), or (III) but is unable to do so, by any other reasonable method to effect delivery; or

"(ii) in the case of a duty-free sales enterprise that is a border store—

"(I) at a merchandise storage location at or beyond the exit point; or

"(II) at any location approved by the Secretary before the date of enactment of the Omnibus Trade Act of 1987.

"(4) If a State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.

"(5) This subsection does not prohibit a duty-free sales enterprise from offering for sale and delivering to, or on behalf of, individuals departing from the customs territory merchandise other than duty-free merchandise, except that such other merchandise may not be stored in a bonded warehouse facility other than a bonded facility used for retail sales.

"(6) Merchandise that is purchased in a duty-free sales enterprise is not eligible for exemption from duty under subpart A of part 2 of schedule 8 of the Tariff Schedules of the United States if such merchandise is brought back to the customs territory.

"(7) The Secretary shall by regulation establish a separate class of bonded warehouses for duty-free sales enterprises. Regulations issued to carry out this paragraph shall take into account the unique characteristics of the different types of duty-free sales enterprises.

"(8) For purposes of this subsection—

"(A) The term 'airport store' means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory from an international airport located within the customs territory.

"(B) The term 'border store' means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory through a land or water border by a means of conveyance other than an aircraft.

"(C) The term 'customs territory' means the customs territory of the United States and foreign trade zones.

"(D) The term 'duty-free sales enterprise' means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.

"(E) The term 'duty-free merchandise' means merchandise sold by a duty-free sales enterprise on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory.

"(F) The term 'exit point' means the area in close proximity to an actual exit for departing from the customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that duty-free merchandise delivered in the gate holding area will be exported from the customs territory.

"(G) The term 'personal use quantities' means quantities that are only suitable for uses other than resale, and includes reasona-

ble quantities for household or family consumption as well as for gifts to others.".

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date that is 15 days after the date of enactment of this Act.

SEC. 1909. CARIBBEAN BASIN INITIATIVE.

(a) FINDINGS.—The Congress finds that—

(1) Caribbean and Central American countries historically have had close economic, political, and cultural ties to the United States;

(2) promoting economic and political stability in the Caribbean and Central America is in the national security interests of the United States;

(3) the economic and political stability of the nations of the Caribbean and Central America can be strengthened significantly by the attraction of foreign and domestic investment specifically devoted to employment generation; and

(4) the diversification of the economies and expansion of exports, particularly those of a non-traditional nature, of the nations of the Caribbean and Central America is linked directly to fair access to the markets of the United States.

(b) INTENT OF THE CONGRESS.—The Congress hereby expresses its intention to ensure that—

(1) the trade elements of the Caribbean Basin Initiative be strengthened in a manner consistent with the promotion of economic and political stability in the Caribbean and Central America;

(2) to the extent that Congress imposes changes that are intended to improve the competitive environment for United States industry and workers, such changes do not unduly affect the unilateral duty-free trade system available to the beneficiary countries designated under the Caribbean Basin Economic Recovery Act; and

(3) generic changes in the trade laws of the United States do not discriminate against imports from designated beneficiary countries in relation to imports from other United States trading partners.

(c) WITHDRAWAL OR SUSPENSION OF DUTY-FREE TREATMENT TO SPECIFIC ARTICLES.—Subsection (e) of section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(e)) is amended to read as follows:

"(e)(1) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

"(A) withdraw or suspend the designation of any country as a beneficiary country, or

"(B) withdraw, suspend, or limit the application of duty-free treatment under this subtitle 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 country under subsection (b).

"(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.".

SEC. 1910. ETHYL ALCOHOL AND MIXTURES FOR FUEL USE.

(a) IN GENERAL.—Subsection (b) of section 423 of the Tax Reform Act of 1986 (19 U.S.C. 2703, note) is amended—

(1) by striking out "and 1988" in paragraphs (1) and (2) and inserting in lieu thereof ", 1988, and 1989",

(2) by striking out "an insular possession of the United States or" in paragraph (1)(A),

(3) by striking out "January 1, 1986, or" in paragraph (1)(A) and inserting in lieu thereof "July 1, 1987,",

(4) by inserting "or an insular possession of the United States" after "beneficiary country" in paragraph (1)(B)(ii)(II),

(5) by striking out the period at the end of paragraph (1)(B) and inserting in lieu thereof ", or",

(6) by inserting the following new subparagraph after subparagraph (B) of paragraph (1):

"(C) a distillation facility operated by a corporation which, before the date of enactment of the Omnibus Trade Act of 1987—

"(i) has completed engineering and design of a full-scale fermentation facility in the United States Virgin Islands, and

"(ii) has obtained authorization from authorities of the United States Virgin Islands to operate a full-scale fermentation facility.", and

(7) by striking out "or (B)" in paragraph (2) and inserting in lieu thereof ", (B), or (C)".

(b) STUDIES.—

(1) The United States International Trade Commission and the Comptroller General of the United States shall each immediately undertake a study regarding whether the definition of indigenous ethyl alcohol or mixtures thereof used in applying section 423 of the Tax Reform Act of 1986 is consistent with, and will contribute to the achievement of, the stated policy of Congress to encourage the economic development of the beneficiary countries under the Caribbean Basin Economic Recovery Act and the insular possessions of the United States through the maximum utilization of the natural resources of those countries and possessions. Each study shall specifically include—

(A) an assessment regarding whether the indigenous product percentage requirements set forth in subsection (c)(2)(B) of such section 423 are economically feasible for ethyl alcohol producers; and

(B) if the assessment under subparagraph (A) is negative, recommended modifications to the indigenous product percentage requirements that—

(i) will ensure meaningful production and employment in the region,

(ii) will discourage pass-through operations, and

(iii) will not result in harm to producers of ethyl alcohol, or mixtures thereof, in the United States; and

(C) an assessment of the effects of imports of ethyl alcohol, and mixtures thereof, from such beneficiary countries and possessions on producers of ethyl alcohol, and mixtures thereof, in the United States.

(2) The United States International Trade Commission and the Comptroller General of the United States shall each submit a report containing the findings and conclusions of the study carried out under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate before the 180th day after the date of the enactment of this Act.

SEC. 1911. ENFORCEMENT OF RESTRICTIONS ON IMPORTS FROM CUBA.

The United States Trade Representative shall request that all relevant agencies prepare appropriate recommendations for improving the enforcement of restrictions on the importation of articles from Cuba. Such recommendations should include, but not be limited to, appropriate measures to prevent indirect shipments or other means of circumvention. The United States Trade Representative shall, after considering such recommendations, report to the Congress, within 90 days after the date of enactment of this Act, on any administrative measures or proposed legislation which the United States Trade Representative considers necessary and appropriate to enforce restrictions on imports from Cuba.

SEC. 1912. CUSTOMS FORFEITURE FUND.

Section 613A of the Tariff Act of 1930 (19 U.S.C. 1613b) is amended—

(1) by striking out "beginning on the date of the enactment of this section, and ending on September 30, 1987," in subsection (c) and inserting in lieu thereof "described in subsection (a) for which the fund is available to the United States Customs Service,", and

(2) by striking out "private citizens" in subsection (a)(iii) and inserting in lieu thereof "private persons".

PART 2—MISCELLANEOUS TRADE PROVISIONS

SEC. 1931. TRADE STATISTICS.

(a) REPORTING OF IMPORT STATISTICS.—Subsection (e) of section 301 of title 13, United States Code, is amended by striking out the last sentence thereof.

(b) VOLUMETRIC INDEX.—

(1) The Director of the Census, in consultation with the Director of the Bureau of Economic Analysis and the Commissioner of Labor Statistics, shall conduct a study to determine the feasibility of developing, and of publishing, an index that measures the real volume of merchandise trade on a monthly basis, which would be reported simultaneously with the balance of merchandise trade for the United States.

(2) The Director of the Census shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the study conducted under paragraph (1) by no later than the date that is one year after the date of enactment of this Act.

SEC. 1932. ADJUSTMENT OF TRADE STATISTICS FOR INFLATION AND DEFLATION.

Subsection (e) of section 301 of title 13, United States Code, is amended by adding at the end thereof the following new sentence: "The information required to be reported under this subsection shall be reported in a form that is adjusted for economic inflation or deflation (on a constant dollar basis consistent with the reporting of the National Income and Product Accounts), and in a form that is not so adjusted.".

SEC. 1933. COAL EXPORTS TO JAPAN.

It is the sense of the Congress that—

(1) the objectives of the November 1983 Joint Policy Statement on Energy Cooperation, as it relates to United States exports of coal to Japan, have not been achieved;

(2) the President should seek to establish reciprocity with Japan with respect to metallurgical coal exports and steel product imports and should encourage increased purchases by Japan of United States steam coal;

(3) the President should direct the United States Trade Representative, in negotiating

a Steel Trade Arrangement with Japan, to take into consideration, consistent with the President's steel program, the amount of coal that Japan purchases from the United States in determining the level of steel, semi-finished steel and fabricated structured steel products that can be imported into the United States;

(4) the President should report to the Congress by November 1, 1988 regarding the results of the outcome of any negotiation undertaken in response to this section.

SEC. 1934. PURCHASES OF UNITED STATES-MADE AUTOMOTIVE PARTS BY JAPAN.

(a) FINDINGS.—The Congress finds that—

(1) the United States merchandise trade deficit reached the unprecedented level of $170,000,000,000 in 1986;

(2) the United States trade deficit with Japan, which reached $59,000,000,000 in 1986, accounted for approximately one-third of the total deficit;

(3) approximately one-half of the United States trade deficit with Japan was in motor vehicles and equipment;

(4) while Japanese automobile firms based in Japan produced 7,800,000 passenger cars in 1986 and exported 2,300,000 cars to the United States, United States exports of auto parts to Japan were only about $300,000,000 in 1986;

(5) United States automotive parts producers meet increasingly rigorous requirements for quality, just-in-time supply, and competitive pricing in the United States market; and

(6) the market-oriented sector specific (MOSS) talks on auto parts are aimed at overcoming substantial market access barriers and increasing the access of United States auto parts producers to the original and replacement parts market represented by Japanese automobiles produced in Japan, the United States, and third countries.

(b) SENSE OF CONGRESS.—The Congress—

(1) strongly supports efforts being made by United States negotiators to expand significantly the opportunities for United States automotive parts producers to supply original and replacement parts for Japanese automobiles, wherever those automobiles may be produced; and

(2) determines that success of the MOSS talks will be measured by a significant increase in sales by United States auto parts companies to Japanese vehicle companies and the initiation of long-term sourcing relationships between such companies.

(c) REPORT ON OUTCOME.—The United States Trade Representative and the Secretary of Commerce shall report to Congress at the conclusion of the MOSS talks on the outcome of the talks and on any agreements reached with Japan with respect to purchases by Japanese firms of United States automotive parts.

SEC. 1935. EFFECT OF IMPORTS ON CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

The Secretary of Energy shall send to the Secretary of Commerce the results of the study conducted under section 3102 of the Omnibus Budget Reconciliation Act of 1986. Within 180 days of the receipt of the results of such study, the Secretary of Commerce shall report to the President and the Congress recommendations for actions which may be appropriate to address any impact of imports of crude oil and petroleum products on domestic crude oil exploration and production and the domestic petroleum refining capacity.

SEC. 1936. STUDY OF TRADE BARRIERS ESTABLISHED BY AUTO PRODUCING COUNTRIES TO AUTO IMPORTS AND THE IMPACT ON THE UNITED STATES MARKET.

(a) STUDY.—The United States Trade Representative shall conduct a study of formal and informal barriers which auto producing countries have established toward automobile imports and the impact of such barriers on diverting automobile imports into the United States. The study shall consider the impact of such barriers on automobile imports into the United States in the presence of, and in the absence of, voluntary restraint agreements between the United States and Japan.

(b) REPORT.—The United States Trade Representative shall include the findings of the study conducted under subsection (a) in the first report that is submitted under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241) after the date of enactment of this Act.

SEC. 1937. LAMB MEAT IMPORTS.

Within 15 days after the date of the enactment of this Act, the United States International Trade Commission, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), shall monitor and investigate for a period of 2 years the importation into the United States of articles provided for in item 106.30 of the Tariff Schedules of the United States (19 U.S.C. 1202) (relating to fresh, chilled, and frozen lamb meet). For purposes of any request made under subsection (d) of section 202 of the Trade Act of 1974 (as amended by section 1401 of this Act) within such 2-year period for provisional relief with respect to imports of such articles, the monitoring and investigation required under this section shall be treated as having been requested by the United States Trade Representative under paragraph (1)(B) of such subsection.

PART 3—OTHER PROVISIONS

SEC. 1941. WINDFALL PROFIT TAX REPEAL.

(a) IN GENERAL.—Chapter 45 of the Internal Revenue Code of 1986 is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Sections 6050C, 6076, 6232, 6429, 6430, and 7241 of the Internal Revenue Code of 1986 are repealed.

(2)(A) Subsection (a) of section 164 of such Code is amended by striking paragraph (4) and redesignating the subsequent paragraphs as paragraphs (4) and (5), respectively.

(B) The following provisions of such Code are each amended by striking "44, or 45" each place it appears and inserting "or 44":

(i) section 6211(a),
(ii) section 6211(b)(2),
(iii) section 6212(a),
(iv) section 6213(a),
(v) section 6213(g),
(vi) section 6214(c),
(vii) section 6214(d),
(viii) section 6161(b)(1),
(ix) section 6344(a)(1), and
(x) section 7422(e).

(C) Subsection (a) of section 6211 of such Code is amended by striking "44, and 45" and inserting "and 44".

(D) Subsection (b) of section 6211 of such Code is amended by striking paragraphs (5) and (6).

(E) Paragraph (1) of section 6212(b) of such Code is amended—

(i) by striking "chapter 44, or chapter 45" and inserting "or chapter 44", and

(ii) by striking "chapter 44, chapter 45, and this chapter" and inserting "chapter 44, and this chapter".

(F) Paragraph (1) of section 6212(c) of such Code is amended—

(i) by striking "of chapter 42 tax" and inserting "or of chapter 42 tax", and

(ii) by striking ", or of chapter 45 tax for the same taxable period".

(G) Subsection (e) of section 6302 of such Code is amended—

(i) by striking "(1) For" and inserting "For", and

(ii) by striking paragraph (2).

(H) Section 6501 of such Code is amended by striking the subsection relating to special rules for windfall profit tax.

(I) Section 6511 of such Code is amended by striking subsection (h) and redesignating subsection (i) as subsection (h).

(J) Subsection (a) of section 6512 of such Code is amended—

(i) by striking "of tax imposed by chapter 41" and inserting "or of tax imposed by chapter 41", and

(ii) by striking ", or of tax imposed by chapter 45 for the same taxable period".

(K) Paragraph (1) of section 6512(b) of such Code is amended—

(i) by striking "of tax imposed by chapter 41" and inserting "or of tax imposed by chapter 41", and

(ii) by striking ", or of tax imposed by chapter 45 for the same taxable period".

(L) Section 6611 of such Code is amended by striking subsection (h) and redesignating subsections (i) and (j) as subsections (h) and (i), respectively.

(M) Subsection (d) of section 6724 of such Code is amended—

(i) by striking clause (i) in paragraph (1)(B) and redesignating clauses (ii) through (x) as clauses (i) through (ix), respectively, and

(ii) by striking subparagraphs (A) and (K) of paragraph (2) and redesignating subparagraphs (B), (C), (D), (E), (F), (G), (H), (I), (J), (L), (M), (N), (O), (P), (Q), (R), (S), and (T) as subparagraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (O), (P), (Q), and (R), respectively.

(N) Subsection (a) of section 6862 of such Code is amended by striking "44, and 45" and inserting "and 44".

(O) Section 7512 of such Code is amended—

(i) by striking ", by chapter 33, or by section 4986" in subsections (a) and (b) and inserting "or chapter 33", and

(ii) by striking ", chapter 33, or section 4986" in subsections (b) and (c) and inserting "or chapter 33".

(3)(A) The table of contents of subtitle D of such Code is amended by striking the item relating to chapter 45.

(B) The table of contents of subpart B of part III of subchapter A of chapter 61 of such Code is amended by striking the item relating to section 6050C.

(C) The table of contents of part V of such subchapter is amended by striking the item relating to section 6076.

(D) The table of contents of subchapter C of chapter 63 of such Code is amended by striking the item relating to section 6232.

(E) The table of contents of subchapter B of chapter 65 of such Code is amended by striking the items relating to sections 6429 and 6430.

(F) The table of contents of part II of subchapter A of chapter 75 of such Code is amended by striking the item relating to section 7241.

(4)(A) Section 280D of such Code is repealed.

(B) The table of sections for part IX of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 280D.

(5) Paragraph (4) of section 291(b) of such Code is amended to read as follows:

"(4) INTEGRATED OIL COMPANY DEFINED.—For purposes of this subsection, the term 'integrated oil company' means, with respect to any taxable year, any producer of crude oil to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d)."

(6)(A) Paragraph (3) of section 6654(f) of such Code is amended to read as follows:

"(3) the credits against tax provided by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages)."

(B) Subparagraph (B) of section 6655(g)(1) of such Code is amended to read as follows:

"(B) the credits against tax provided by part IV of subchapter A of chapter 1."

(7) Subparagraph (A) of section 193(b)(3) of such Code is amended by striking "section 4996(b)(8)(C)" and inserting "section 4996(b)(8)(C) as in effect before its repeal".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to crude oil removed from the premises on or after the date of the enactment of this Act.

TITLE II—EXPORT ENHANCEMENT

SEC. 2001. SHORT TITLE.

This title may be referred to as the "Export Enhancement Act of 1988".

Subtitle A—TRADE AND FOREIGN POLICY

PART I—RELATIONS WITH CERTAIN COUNTRIES

SEC. 2101. UNITED STATES-MEXICO FRAMEWORK AGREEMENT ON TRADE AND INVESTMENT.

(a) FINDINGS.—The Congress finds that the Bilateral Framework Agreement on Trade and Investment, entered into by the United States and Mexico on November 6, 1987—

(1) provides a useful vehicle for the management of bilateral trade and investment relations, based on shared principles and objectives;

(2) establishes procedures for consultation by the two countries on matters of bilateral trade and investment, and should facilitate resolution of disputes on these matters; and

(3) has led to negotiations between the two countries on important issues, and should continue to facilitate such negotiations.

(b) FURTHER IMPLEMENTATION OF THE AGREEMENT.—Within the context of the Bilateral Framework Agreement on Trade and Investment, the President is urged to continue to pursue consultations with representatives of the Government of Mexico for the purposes of implementing the Agreement and achieving an expansion of mutually beneficial trade and investment.

SEC. 2102. RELATIONS WITH COUNTRIES PROVIDING OFFENSIVE WEAPONRY TO BELLIGERENT COUNTRIES IN THE PERSIAN GULF REGION.

It is the sense of the Congress that the President should use all available appropriate leverage to persuade all countries to desist from any further transfers of offensive weaponry, such as Silkworm missiles, to any belligerent country in the Persian Gulf region.

PART II—FAIR TRADE IN AUTO PARTS

SEC. 2121. SHORT TITLE.

This part may be referred to as the "Fair Trade in Auto Parts Act of 1988".

SEC. 2122. DEFINITION.

For purposes of this part, the term "Japanese markets" refers to markets, including those in the United States and Japan, where automotive parts and accessories, both original equipment and aftermarket, are purchased for use in the manufacture or repair of Japanese automobiles.

SEC. 2123. ESTABLISHMENT OF INITIATIVE ON AUTO PARTS SALES TO JAPAN.

(a) IN GENERAL.—The Secretary of Commerce shall establish an initiative to increase the sale of United States-made auto parts and accessories to Japanese markets.

(b) FUNCTIONS.—In carrying out this section, the Secretary shall—

(1) foster increased access for United States-made auto parts and accessories to Japanese companies, including specific consultations on access to Japanese markets;

(2) facilitate the exchange of information between United States auto parts manufacturers and the Japanese automobile industry;

(3) collect data and market information on the Japanese automotive industry regarding needs, trends, and procurement practices, including the types, volume, and frequency of parts sales to Japanese automobile manufacturers;

(4) establish contacts with Japanese automobile manufacturers in order to facilitate contact between United States auto parts manufacturers and Japanese automobile manufacturers;

(5) report on and attempt to resolve disputes, policies, or practices, whether public or private, that result in barriers to increased commerce between United States auto parts manufacturers and Japanese automobile manufacturers;

(6) take actions to initiate periodic consultations with officials of the Government of Japan regarding sales of United States-made auto parts in Japanese markets; and

(7) submit annual written reports or otherwise report annually to the Congress on the sale of United States-made auto parts in Japanese markets, including the extent to which long-term, commercial relationships exist between United States auto parts manufacturers and Japanese automobile manufacturers.

SEC. 2124. ESTABLISHMENT OF SPECIAL ADVISORY COMMITTEE ON AUTO PARTS SALES IN JAPAN.

(a) IN GENERAL.—The Secretary of Commerce shall seek the advice of the United States automotive parts industry in carrying out this part.

(b) ESTABLISHMENT OF COMMITTEE.—The Secretary of Commerce shall establish a Special Advisory Committee for purposes of carrying out this part.

(c) FUNCTIONS.—The Special Advisory Committee established under subsection (b) shall—

(1) report to the Secretary of Commerce on barriers to sales of United States-made auto parts and accessories in Japanese markets;

(2) review and consider data collected on sales of United States-made auto parts and accessories in Japanese markets;

(3) advise the Secretary of Commerce during consultations with the Government of Japan on issues concerning sales of United States-made auto parts in Japanese markets;

(4) assist in establishing priorities for the initiative established under section 2123, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and

(5) assist the Secretary in reporting, or otherwise report to the Congress as requested, on the progress of sales of United States-made auto parts in Japanese markets.

(d) AUTHORITY.—The Secretary of Commerce shall draw on existing budget authority in carrying out this part.

SEC. 2125. EXPIRATION DATE.

The authorities under this part shall expire on December 31, 1993.

Subtitle B—Export Enhancement

PART I—GENERAL PROVISIONS

SEC. 2201. COMMERCIAL PERSONNEL AT THE AMERICAN INSTITUTE OF TAIWAN.

The American Institute of Taiwan shall employ personnel to perform duties similar to those performed by personnel of the United States and Foreign Commercial Service. The number of individuals employed shall be commensurate with the number of United States personnel of the Commercial Service who are permanently assigned to the United States diplomatic mission to South Korea.

SEC. 2202. COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES.

The Secretary of State shall, not later than January 31 of each year, prepare and transmit to the Committee on Foreign Affairs and the Committee on Ways and Means of the House of Representatives, to the Committee on Foreign Relations and the Committee on Finance of the Senate, and to other appropriate committees of the Congress, a detailed report regarding the economic policy and trade practices of each country with which the United States has an economic or trade relationship. The Secretary may direct the appropriate officers of the Department of State who are serving overseas, in consultation with appropriate officers or employees of other departments and agencies of the United States, including the Department of Agriculture and the Department of Commerce, to coordinate the preparation of such information in a country as is necessary to prepare the report under this section. The report shall identify and describe, with respect to each country—

(1) the macroeconomic policies of the country and their impact on the overall growth in demand for United States exports;

(2) the impact of macroeconomic and other policies on the exchange rate of the country and the resulting impact on price competitiveness of United States exports;

(3) any change in structural policies (including tax incentives, regulations governing financial institutions, production standards, and patterns of industrial ownership) that may affect the country's growth rate and its demand for United States exports;

(4) the management of the country's external debt and its implications for trade with the United States;

(5) acts, policies, and practices that constitute significant barriers to United States exports or foreign direct investment in that country by United States persons, as identified under section 181(a)(1) of the Trade Act of 1974 (19 U.S.C. 2241(a)(1));

(6) acts, policies, and practices that provide direct or indirect government support for exports from that country, including exports by small businesses;

(7) the extent to which the country's laws and enforcement of those laws afford adequate protection to United States intellectual property, including patents, trademarks, copyrights, and mask works; and

(8) the country's laws, enforcement of those laws, and practices with respect to internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974), the conditions of worker rights in any sector which produces goods in which United States capital is invested, and the extent of such investment.

SEC. 2203. OVERSEAS PRIVATE INVESTMENT CORPORATION.

(a) REAFFIRMATION OF SUPPORT FOR OPIC.—The Congress reaffirms its support for the Overseas Private Investment Corporation as a United States Government agency serving important development assistance goals. In order to enhance the Corporation's ability to meet these goals, the Overseas Private Investment Corporation should increase its loan guaranty and direct investment programs.

(b) INCREASE IN GUARANTIES AND DIRECT INVESTMENTS.—

(1) LOAN GUARANTIES.—Section 235(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)) is amended—

(A) in paragraph (2) by striking "$750,000,000" and inserting "$1,000,000,000";

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

"(5) Subject to paragraphs (2), (3), and (4), the Corporation shall issue guaranties under section 234(b) having an aggregate contingent liability with respect to principal of not less than $200,000,000 in each fiscal year, to the extent that there are eligible projects which meet the Corporation's criteria for such guaranties.".

(2) DIRECT INVESTMENT.—Section 235(b) of the Foreign Assistance Act of 1961 is amended—

(A) by striking the comma after "Act of 1981" and inserting a period; and

(B) by striking "and the Corporation shall use" and all that follows through "funding" and inserting the following:

"The Corporation shall make loans under section 234(c) in an aggregate amount of not less than $25,000,000 in each fiscal year, to the extent that there are eligible projects which meet the Corporation's criteria for such loans".

(c) OPERATIONS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION IN THE PEOPLE'S REPUBLIC OF CHINA.—Section 231A(a) of the Foreign Assistance Act of 1961 is amended by adding at the end the following new paragraph:

"(4) In making a determination under this section for the People's Republic of China, the Corporation shall discuss fully and completely the justification for making such determination with respect to each item set forth in subparagraphs (A) through (E) of section 502(a)(4) of the Trade Act of 1974.".

SEC. 2204. TRADE AND DEVELOPMENT PROGRAM.

(a) REAFFIRMATION OF SUPPORT FOR TRADE AND DEVELOPMENT PROGRAM.—The Congress reaffirms its support for the Trade and Development Program, and believes that the Program's ability to support high priority development projects in developing countries would be enhanced by an increase in the funds authorized for the Program as well as by a clarification of the Program's status as a separate component of the International Development Cooperation Agency.

(b) AUTHORIZATION AND USES OF FUNDS; ESTABLISHMENT AS SEPARATE AGENCY.—

(1) ADDITIONAL USES OF FUNDS.—Section 661(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2421(a)) is amended by inserting after the first sentence the following: "Funds under this section may be used to provide support for project planning, development, management, and procurement for both bilateral and multilateral projects, including training activities undertaken in connection with a project, for the purpose of promoting the use of United States exports in such projects.".

(2) ESTABLISHMENT AS A SEPARATE AGENCY.—Section 661 of that Act is amended—

(A) by redesignating subsection (b) as subsection (d); and

(B) by inserting after subsection (a) the following:

"(b)(1) The purposes of this section shall be carried out by the Trade and Development Program, which shall be a separate component agency of the International Development Cooperation Agency. The Trade and Development Program shall not be an agency within the Agency for International Development or any other component agency of the International Development Cooperation Agency.

"(2) There shall be at the head of the Trade and Development Program a Director. Any individual appointed as the Director on or after January 1, 1989, shall be appointed by the President, by and with the advice and consent of the Senate.

"(3) The Trade and Development Program should serve as the primary Federal agency to provide information to persons in the private sector concerning trade development and export promotion related to bilateral development projects. The Trade and Development Program shall cooperate with the Office of International Major Projects of the Department of Commerce in providing information to persons in the private sector concerning trade development and export promotion related to multilateral development projects. Other Federal departments and agencies shall cooperate with the Trade and Development Program in order for the Program to more effectively provide informational services in accordance with this paragraph.

"(4) The Director of the Trade and Development Program shall, not later than December 31 of each year, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the activities of the Trade and Development Program in the preceding fiscal year.

"(c) The Director of the Trade and Development Program shall, by regulation, establish an advisory board which shall include representatives of the private sector. The purpose of the advisory board shall be to make recommendations to the Director with respect to the Trade and Development Program.".

(3) FUNDING LEVELS.—In addition to funds otherwise available to the President for purposes of section 661 of the Foreign Assistance Act of 1961—

(A) not less than $5,000,000 and not more than $10,000,000 for fiscal year 1988 shall be made available for such purposes, half of which shall be derived from amounts available to carry out section 108 of the Foreign Assistance Act of 1961 for such fiscal year, and half of which shall be derived from amounts available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 for such fiscal year; and

(B) not less than $5,000,000 and not more than $10,000,000 for fiscal year 1989 shall be made available for such purposes, half of which shall be derived from amounts available to carry out section 108 of the Foreign Assistance Act of 1961 for such fiscal year, and half of which shall be derived from amounts available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 for such fiscal year.

(4) ADDITIONAL FUNDING.—(A) In addition to the amounts otherwise available to the President for purposes of section 661 of the Foreign Assistance Act of 1961 (including amounts available under paragraph (3) of this subsection) for fiscal years 1988 and 1989, there are authorized to be appropriated $10,000,000 for each such fiscal year for education and training programs undertaken in connection with projects under section 661 of that Act, including the operating expenses incurred in implementing such programs. Particular emphasis shall be placed on including in such programs nationals from the People's Republic of China and the Republic of China (Taiwan). Assistance may be provided for education and training under this paragraph only if there is a reasonable expectation that such education and training will result in increased exports from the United States and will not have a negative impact on employment in the United States.

(B) Of the funds made available to carry out subparagraph (A), 50 percent of such funds shall be available only for education and training programs administered in the United States by small business concerns as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(c) AUTHORITIES UNDER THE TRADE AND DEVELOPMENT ENHANCEMENT ACT OF 1983.—

(1) TRANSFER OF FUNCTIONS FROM AID TO TDP.—(A) Section 644 of the Trade and Development Enhancement Act of 1983 (12 U.S.C. 635q) is amended—

(i) in subsection (a)(2) by striking "Agency for International Development" and inserting "Trade and Development Program";

(ii) in subsection (a)(3)(A)—

(I) by striking "offered by the Agency for International Development" and inserting "made available under section 645(d) of this Act"; and

(II) by striking "Agency for International Development" and inserting "Trade and Development Program"; and

(iii) in subsection (d)—

(I) by striking "offered by the Agency for International Development" and inserting "made available under section 645(d) of this Act"; and

(II) by striking "subsections (c) and (d) of section 645" and inserting "section 645(c)".

(B) Section 645 of that Act (12 U.S.C. 635r) is amended—

(i) in the section heading by striking "IN THE AGENCY FOR INTERNATIONAL DEVELOPMENT" and inserting "ADMINISTERED BY THE TRADE AND DEVELOPMENT PROGRAM";

(ii) in subsection (a)—

(I) by striking "Administrator of the Agency for International Development shall establish within the Agency" and inserting "Director of the Trade and Development Program shall carry out";

(II) in paragraph (1) by striking "offered by the Agency for International Development" and inserting "made available under subsection (d)";

(III) in paragraph (1) by striking "Agency for International Development" and inserting "Trade and Development Program";

(IV) in paragraph (2) by striking "offered by the Agency for International Development" and inserting "made available under subsection (d)"; and

(V) in paragraph (2) by striking "Agency for International Development" and inserting "Trade and Development Program";

(iii) in subsection (c)—

(I) in paragraph (1) by striking "of the Agency for International Development"; and

(II) in paragraph (2) by striking "Administrator of the Agency for International Development" and inserting "Director of the Trade and Development Program"; and

(iv) by amending subsection (d) to read as follows:

"(d) Funds available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 may be used by the Director of the Trade and Development Program, with the concurrence of the Secretary of State (as provided under section 531 of the Foreign Assistance Act of 1961), for the purposes for which funds made available under this subsection are authorized to be used in section 644 and this section. The Secretary of State shall exercise his authority in cooperation with the Administrator of the Agency for International Development. Funds made available pursuant to this subsection may be used to finance a tied aid credit activity in any country eligible for tied aid credits under this Act.".

(2) FUNCTIONS OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES.—Section 646 of the Trade and Development Enhancement Act of 1983 (12 U.S.C. 635s) is amended by adding at the end the following:

"(b) The Trade and Development Program shall be represented at any meetings of the National Advisory Council on International Monetary and Financial Policies for discussion of tied aid credit matters, and the representative of the Trade and Development Program at any such meeting shall have the right to vote on any decisions of the Advisory Council relating to tied aid credit matters.".

(d) ADMINISTRATIVE PROVISIONS.—

(1) PAY OF DIRECTOR OF TDP.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Director, Trade and Development Program.".

(2) TRANSITION PROVISIONS.—(A) The Administrator of the Agency for International Development shall transfer to the Director of the Trade and Development Program all records, contracts, applications, and any other documents or information in connection with the functions transferred by virtue of the amendments made by subsection (c)(1).

(B) All determinations, regulations, and contracts—

(i) which have been issued, made, granted, or allowed to become effective by the President, the Agency for International Development, or by a court of competent jurisdiction, in the performance of the functions transferred by virtue of the amendments made by subsection (c)(1), and

(ii) which are in effect at the time this section takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the President, the Director of the Trade and Development Program, or other authorized official, by a court of competent jurisdiction, or by operation of law.

(C)(i) The amendments made by subsection (c)(1) shall not affect any proceedings, including notices of proposed rulemaking, or any application for any financial assistance, which is pending on the effective date of this section before the Agency for International Development in the exercise of functions transferred by virtue of the amendments made by subsection (c)(1). Such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued.

(ii) Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Director of the Trade and Development Program or other authorized official, by a court of competent jurisdiction, or by operation of law.

(iii) Nothing in this subparagraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(iv) The Director of the Trade and Development Program is authorized to issue regulations providing for the orderly transfer to the Trade and Development Program of proceedings continued under this subparagraph.

(D) With respect to any function transferred by virtue of the amendments made by subsection (c)(1) and exercised on or after the effective date of this section, reference in any other Federal law to the Agency for International Development or any officer shall be deemed to refer to the Trade and Development Program or other official to which such function is so transferred.

SEC. 2205. BARTER AND COUNTERTRADE.

(a) INTERAGENCY GROUP.—

(1) ESTABLISHMENT.—The President shall establish an interagency group on countertrade, to be composed of representatives of such departments and agencies of the United States as the President considers appropriate. The Secretary of Commerce shall be the chairman of the interagency group.

(2) FUNCTIONS.—It shall be the function of the interagency group to—

(A) review and evaluate—

(i) United States policy on countertrade and offsets, in light of current trends in international countertrade and offsets and the impact of those trends on the United States economy;

(ii) the use of countertrade and offsets in United States exports and bilateral United States foreign economic assistance programs; and

(iii) the need for and the feasibility of negotiating with other countries, through the Organization for Economic Cooperation and Development and other appropriate international organizations, to reach agreements on the use of countertrade and offsets; and

(B) make recommendations to the President and the Congress on the basis of the review and evaluation referred to in subparagraph (A).

(3) SHARING OF INFORMATION.—Other departments and agencies of the United States shall provide to the interagency group such information available to such departments and agencies as the interagency group may request, except that the requirements, including penalties for violation thereof, for preserving the confidentiality of such information which are applicable to the officials, employees, experts, or consultants of such departments and agencies shall apply in the same manner to each member of the interagency group and to any other person performing any function under this subsection.

(b) OFFICE OF BARTER.—

(1) ESTABLISHMENT—There is established, within the International Trade Administration of the Department of Commerce, the Office of Barter (hereafter in this section referred to as the "Office").

(2) DIRECTOR.—There shall be at the head of the Office a Director, who shall be appointed by the Secretary of Commerce.

(3) STAFF.—The Secretary of Commerce shall transfer such staff to the Office as the Secretary determines is necessary to enable the Office to carry out its functions under this section.

(4) FUNCTIONS.—It shall be the function of the Office to—

(A) monitor information relating to trends in international barter;

(B) organize and disseminate information relating to international barter in a manner useful to business firms, educational institutions, export-related Federal, State, and local government agencies, and other interested persons, including publishing periodic lists of known commercial opportunities for barter transactions beneficial to United States enterprises;

(C) notify Federal agencies with operations abroad of instances where it would be beneficial to the United States for the Federal Government to barter Government-owned surplus commodities for goods and services purchased abroad by the Federal Government; and

(D) provide assistance to enterprises seeking barter and countertrade opportunities.

SEC. 2206. PROTECTION OF UNITED STATES INTELLECTUAL PROPERTY.

It is the sense of the Congress that—

(1) the Secretary of State should urge international technical organizations, such as the World Intellectual Property Organization, to provide expertise and cooperate fully in developing effective standards, in the General Agreement on Tariffs and Trade, for the international protection of intellectual property rights; and

(2) development assistance programs administered by the Agency for International Development, especially the reimbursable development program, should, in cooperation with the Copyright Office and the Patent and Trademark Office, include technical training for officials responsible for the protection of patents, copyrights, trademarks, and mask works in those countries that receive such development assistance.

SEC. 2207. REPORT ON WORKER RIGHTS.

The Secretary of State shall conduct an in-depth study with a view to improving the breadth, content, and utility of the annual reports submitted to the Congress pursuant to section 505(c) of the Trade Act of 1974 regarding the status of internationally recognized worker rights in foreign countries. Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit a report to the Congress on the findings of such study and shall include in the report recommendations for upgrading the capacity of the United States Government to monitor and report on other countries' respect for such rights.

SEC. 2208. JAPANESE IMPORTATION OF MANUFACTURED GOODS FROM LESS DEVELOPED COUNTRIES.

(a) FINDINGS.—The Congress finds that—

(1) Japan's merchandise trade surplus rose from $62,000,000,000 in fiscal year 1985 to $101,000,000,000 in fiscal year 1986;

(2) these surpluses pose a grave threat to the free trade system;

(3) Japan's most important contribution to the international trading system would be to commit itself as a nation to import with vigor, just as it has exported with vigor in recent decades;

(4) Japan should particularly increase its imports of manufactured goods; and

(5) Japan's share of the exports of less developed countries has declined from 10.6 percent in 1979 to below 8 percent in 1985.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) by taking its proportionate share of the manufactured exports of developing countries, Japan will promote not only its economic development but the economic conditions conducive to democracy;

(2) expanding markets for the manufactured exports of less developed countries will directly benefit the United States, and, if less developed countries are able to increase exports to Japan, these countries will be able to earn more of the hard currency needed to service their foreign debt obligations and make the investments necessary to chart a course of solid economic growth; and

(3) if less developed countries are able to export manufactured goods to Japan, they will be under less pressure to divert exports to the United States market.

SEC. 2209. JAPAN AND THE ARAB BOYCOTT OF ISRAEL.

It is the sense of the Congress that the United States should encourage the Government of Japan in its efforts to expand trade relations with Israel and to end compliance by Japanese commercial enterprises with the Arab economic boycott of Israel.

SEC. 2210. FACILITATION OF JEWELRY TRADE.

It is the sense of the Congress that the United States should become a party to the Convention on the Control and Marking of Articles of Precious Metals in order to facilitate the efforts of the United States jewelry industry in penetrating foreign markets.

SEC. 2211. LOAN GUARANTEES.

Section 108 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151f) is amended by adding at the end the following:

"(i)(1) To carry out the purposes of subsection (a), in addition to the other authorities set forth in this section, the agency primarily responsible for administering this part is authorized to issue guarantees on such terms and conditions as it shall determine assuring against losses incurred in connection with loans made to projects that meet the criteria set forth in subsection (c). The full faith and credit of the United States is hereby pledged for the full payment and performance of such guarantees.

"(2) Loans guaranteed under this subsection shall be on such terms and conditions as the agency may prescribe, except for the following:

"(A) The agency shall issue guarantees only when it is necessary to alleviate a credit market imperfection.

"(B) Loans guaranteed shall provide for complete amortization within a period not to exceed ten years or, if the principal purpose of the guaranteed loan is to finance the construction or purchase of a physical asset with a useful life of less than ten years, within a period not to exceed such useful life.

"(C) No loan guaranteed to any one borrower may exceed 50 percent of the cost of the activity to be financed, or $3,000,000, whichever is less, as determined by the agency.

"(D) No loan may be guaranteed unless the agency determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

"(E) The fees earned from the loan guarantees issued under this subsection shall be deposited in the revolving fund account as part of the guarantee reserve established under paragraph (5) of this subsection. Fees shall be assessed at a level such that the fees received, plus the funds from the revolving fund account placed in the guarantee reserve, satisfy the requirements of paragraph (5). Fees shall be reviewed every twelve months to ensure that the fees assessed on new loan guarantees are at the required level.

"(F) Any guarantee shall be conclusive evidence that such guarantee has been properly obtained, and that the underlying loan as contracted qualifies for such guarantee. Except for fraud or material misrepresentation for which the parties seeking payment under such guarantee are responsible, such guarantee shall be presumed to be valid, legal, and enforceable.

"(G) The agency shall determine that the standards used by the lender for assessing the credit risk of new and existing guaranteed loans are reasonable. The agency shall require that there be a reasonable assurance of repayment before credit assistance is extended.

"(H) Commitments to guarantee loans may be made by the agency only to the extent that the total loan principal, any part of which is guaranteed, will not exceed the amount specified in annual appropriations Acts.

"(3) To the extent that fees are not sufficient as specified under paragraph (2)(E) to cover expected future liabilities, appropriations are authorized to maintain an appropriate reserve.

"(4) The losses guaranteed under this subsection may be in dollars or in other currencies. In the case of loans in currencies other than dollars, the guarantees issued shall be subject to an overall payment limitation expressed in dollars.

"(5) The agency shall segregate in the revolving fund account and hold as a reserve an amount estimated to be sufficient to cover the agency's expected net liabilities on the loan guarantees outstanding under this subsection; except that the amount held in reserve shall not be less than 25 percent of the principal amount of the agency's outstanding contingent liabilities on such guarantees. Any payments made to discharge liabilities arising from the loan guarantees shall be paid first out of the assets in the revolving fund account and next out of other funds made available for this purpose.".

PART II—ASSISTANCE TO POLAND

SEC. 2221. SHORT TITLE.

This part may be cited as the "American Aid to Poland Act of 1988".

SEC. 2222. FUNDING FOR SCIENCE AND TECHNOLOGY AGREEMENT.

(a) FUNDING.—For purposes of implementing the 1987 United States-Polish science and technology agreement, there are authorized to be appropriated to the Secretary of State for fiscal year 1988, $1,000,000.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under subsection (a) are authorized to remain available until expended.

(c) DEFINITION.—For purposes of this section, the term "1987 United States-Polish science and technology agreement" refers to the draft agreement concluded in 1987 by the United States and Poland, entitled "Agreement Between the Government of the United States of America and the Polish People's Republic on Cooperation in Science and Technology and Its Funding", together with annexes relating thereto.

SEC. 2223. DONATION OF SURPLUS AGRICULTURAL COMMODITIES.

(a) AUTHORITY TO DONATE.—Notwithstanding any other provision of law, the Secretary of Agriculture shall donate, under the applicable provisions of section 416(b) of the Agricultural Act of 1949, for each of the fiscal years 1988 through 1992, 8,000 metric tons of uncommitted stocks of eligible commodities of the Commodity Credit Corporation under an agreement with the Government of Poland that the Government of Poland will sell such commodities and that all the proceeds from such sales will be used by nongovernmental agencies for eligible activities in Poland described in section 416(b)(7)(D)(ii) of that Act (as amended by section 2225 of this Act) that have been approved, upon application, by the joint commission described in section 2226 and by the United States chief of diplomatic mission in Poland.

(b) DEFINITIONS.—For purposes of this section—

(1) the term "eligible commodities" has the same meaning as is given such term in section 416(b)(2) of the Agricultural Act of 1949 and, in addition, includes feed grains; and

(2) the term "nongovernmental agencies" includes nonprofit voluntary agencies, cooperatives, intergovernmental agencies such as the World Food Program, and other multilateral organizations.

SEC. 2224. USE OF POLISH CURRENCIES.

(a) USE OF POLISH CURRENCIES.—Subject to subsection (b), nonconvertible Polish currencies (zlotys) held by the United States on the date of enactment of this Act pursuant to an agreement with the Government of Poland under the Agricultural Trade Development and Assistance Act of 1954 which are not assets of the Commodity Credit Corporation shall be made available, to the extent and in such amounts as are provided in advance in appropriation Acts, for eligible activities in Poland described in section 416(b)(7)(D)(ii) of the Agricultural Act of 1949 (as amended by section 2225 of this Act) and approved, upon application, by the joint commission described in section 2226 and by the United States chief of diplomatic mission in Poland.

(b) AVAILABILITY OF CURRENCIES.—Currencies available under subsection (a) are currencies available after satisfaction of existing commitments to use such currencies for other purposes specified by law.

SEC. 2225. ELIGIBLE ACTIVITIES.

Section 416(b)(7)(D)(ii) of the Agricultural Act of 1949 is amended by adding at the end the following: "In addition, foreign currency proceeds generated in Poland may also be used by such agencies or cooperatives for eligible activities approved by the joint commission established pursuant to section 2226 of the American Aid to Poland Act of 1988 and by the United States chief of diplomatic mission in Poland that would improve the quality of life of the Polish people and would strengthen and support the activities of private, nongovernmental independent institutions in Poland. Activities eligible under the preceding sentence include—

"(I) any project undertaken in Poland under the auspices of the Charitable Commission of the Polish Catholic Episcopate for the benefit of handicapped or orphaned children;

"(II) any project for the reconstruction, renovation, or maintenance of the Research Center on Jewish History and Culture of the Jagiellonian University of Krakow, Poland, established for the study of events related to the Holocaust in Poland; and

"(III) any other project or activity which strengthens and supports private and independent sectors of the Polish economy, especially independent farming and agriculture.".

SEC. 2226. JOINT COMMISSION.

(a) ESTABLISHMENT.—The joint commission referred to in sections 2223 and 2224 and in section 416(b)(7)(D)(ii) of the Agricultural Act of 1949 (as amended by section 2225 of this Act) shall be established under an agreement between the United States Government, the Government of Poland, and nongovernmental agencies (as defined in section 2223) operating in Poland.

(b) MEMBERSHIP.—The joint commission shall be composed of—

(1) appropriate representatives of the Government of Poland;

(2) appropriate representatives of nongovernmental agencies which are parties to the agreement described in subsection (a); and

(3) representatives from the United States diplomatic mission in Poland, which may include a representative of the Foreign Agricultural Service.

SEC. 2227. PROVISION OF MEDICAL SUPPLIES AND HOSPITAL EQUIPMENT TO POLAND.

In addition to amounts authorized to be appropriated to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund) for fiscal years 1988 and 1989, there are authorized to be appropriated to carry out that chapter for each such fiscal year $2,000,000, which shall be available only for providing medical supplies and hospital equipment to Poland through private and voluntary organizations, including for the expenses of purchasing, transporting, and distributing such supplies and equipment.

Subtitle C—Export Promotion

SEC. 2301. UNITED STATES AND FOREIGN COMMERCIAL SERVICE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Commerce shall establish, within the International Trade Administration, the United States and Foreign Commercial Service. The Secretary shall, to the greatest extent practicable, transfer to the Commercial Service the functions and personnel of the United States and Foreign Commercial Services.

(2) ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL; OTHER PERSONNEL.—The head of the Commercial Service shall be the Assistant Secretary of Commerce and Director General of the Commercial Service, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary of Commerce and Director General of the Commercial Service may appoint Commercial Service Officers and such other personnel as may be necessary to carry out the activities of the Commercial Service.

(3) COORDINATION WITH FOREIGN POLICY OBJECTIVES.—The Secretary shall take the necessary steps to ensure that the activities of the Commercial Service are carried out in a manner consistent with United States foreign policy objectives, and the Secretary shall consult regularly with the Secretary of State in order to comply with this paragraph.

(4) AUTHORITY OF CHIEF OF MISSION.—All activities of the Commercial Service shall be subject to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(b) STATEMENT OF PURPOSE.—The Commercial Service shall place primary emphasis on the promotion of exports of goods and services from the United States, particularly by small businesses and medium-sized businesses, and on the protection of United States business interests abroad by carrying out activities such as—

(1) identifying United States businesses with the potential to export goods and services and providing such businesses with advice and information on establishing export businesses;

(2) providing United States exporters with information on economic conditions, market opportunities, the status of the intellectual property system in such country, and the legal and regulatory environment within foreign countries;

(3) providing United States exporters with information and advice on the necessary adaptation of product design and marketing strategy to meet the differing cultural and technical requirements of foreign countries;

(4) providing United States exporters with actual leads and an introduction to contacts within foreign countries;

(5) assisting United States exporters in locating reliable sources of business services in foreign countries;

(6) assisting United States exporters in their dealings with foreign governments and enterprises owned by foreign governments; and

(7) assisting the coordination of the efforts of State and local agencies and private organizations which seek to promote United States business interests abroad so as to maximize their effectiveness and minimize the duplication of efforts.

(c) OFFICES.—

(1) IN GENERAL.—The Commercial Service shall conduct its activities at a headquarters office, district offices located in major United States cities, and foreign offices located in major foreign cities.

(2) HEADQUARTERS.—The headquarters of the Commercial Service shall provide such managerial, administrative, research, and other services as the Secretary considers necessary to carry out the purposes of the Commercial Service.

(3) DISTRICT OFFICES.—The Secretary shall establish district offices of the Commercial Service in any United States city in a region in which the Secretary determines that there is a need for Federal Government export assistance.

(4) FOREIGN OFFICES.—(A) The Secretary may, after consultation with the Secretary of State, establish foreign offices of the Commercial Service. These offices shall be located in foreign cities in regions in which the Secretary determines there are significant business opportunities for United States exporters.

(B) The Secretary may, in consultation with the Secretary of State, assign to the foreign offices Commercial Service Officers and such other personnel as the Secretary considers necessary. In employing Commercial Service Officers and such other personnel, the Secretary shall use the Foreign Service personnel system in accordance with the Foreign Service Act of 1980. The Secretary shall designate a Commercial Officer as head of each foreign office.

(C) Upon the request of the Secretary, the Secretary of State shall attach the Commercial Service Officers and other employees of each foreign office to the diplomatic mission of the United States in the country in which that foreign office is located, and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

(D) For purposes of official representation, the senior Commercial Service Officer in each country shall be considered to be the senior commercial representative of the United States in that country, and the United States chief of mission in that country shall accord that officer all privileges and responsibilities appropriate to the position of senior commercial representative of other countries.

(E) The Secretary of State is authorized, upon the request of the Secretary, to provide office space, equipment, facilities, and such other administrative and clerical services as may be required for the operation of the foreign offices. The Secretary is authorized to reimburse or advance funds to the Secretary of State for such services.

(F) The authority of the Secretary under this paragraph shall be subject to section 103 of the Diplomatic Security Act (22 U.S.C. 4802).

(d) RANK OF COMMERCIAL SERVICE OFFICERS IN FOREIGN MISSIONS.—

(1) MINISTER-COUNSELOR.—Notwithstanding any other provision of law, the Secretary is authorized to designate up to 8 United States missions abroad at which the senior Commercial Service Officer will be able to use the diplomatic title of Minister-Counselor. The Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Service Officer assigned to a United States mission so designated.

(2) CONSUL GENERAL.—In any United States consulate in which a vacancy occurs in the position of Consul General, the Secretary of State, in consultation with the Secretary, shall consider filling that vacancy with a Commercial Service Officer if the primary functions of the consulate are of a commercial nature and if there are significant business opportunities for United States exporters in the region in which the consulate is located.

(e) INFORMATION DISSEMINATION.—In order to carry out subsection (b)(7), to lessen the cost of distribution of information produced by the Commercial Service, and to make that information more readily available, the Secretary should establish a system for distributing that information in those areas where no district offices of the Commercial Service are located. Distributors of the information should be State export promotion agencies or private export and trade promotion associations. The distribution system should be consistent with cost recovery objectives of the Department of Commerce.

(f) AUDITS.—The Inspector General of the Department of Commerce shall perform periodic audits of the operations of the Commercial Service, but at least once every 3 years. The Inspector General shall report to the Congress the results of each such audit. In addition to an overview of the activities and effectiveness of Commercial Service operations, the audit shall include—

(1) an evaluation of the current placement of domestic personnel and recommendations for transferring personnel among district offices;

(2) an evaluation of the current placement of foreign-based personnel and recommendations for transferring such personnel in response to newly emerging business opportunities for United States exporters; and

(3) an evaluation of the personnel system and its management, including the recruitment, assignment, promotion, and performance appraisal of personnel, the use of limited appointees, and the "time-in-class" system.

(g) REPORT BY THE SECRETARY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Congress on the feasibility and desirability, the progress to date, the present status, and the 5-year outlook, of the comprehensive integration of the functions and personnel of the foreign and domestic export

promotion operations within the International Trade Administration of the Department of Commerce.

(h) PAY OF ASSISTANT SECRETARY AND DIRECTOR GENERAL.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.".

(i) DEFINITIONS.—For purposes of this section—

(1) the term "Secretary" means the Secretary of Commerce;

(2) the term "Commercial Service" means the United States and Foreign Commercial Service;

(3) the term "United States exporter" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State; or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(4) the term "small business" means any small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632);

(5) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(6) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

SEC. 2302. COMMERCIAL SERVICE OFFICERS AND MULTILATERAL DEVELOPMENT BANK PROCUREMENT.

(a) APPOINTMENT OF COMMERCIAL SERVICE OFFICERS TO SERVE WITH EXECUTIVE DIRECTORS.—The Secretary of Commerce, in consultation with the Secretary of the Treasury, shall appoint a procurement officer, who is a representative of the International Trade Administration or a Commercial Service Officer of the United States and Foreign Commercial Service, to serve, on a full-time or part-time basis, with each of the Executive Directors of the multilateral development banks in which the United States participates.

(b) FUNCTIONS OF OFFICERS.—Each procurement officer appointed under subsection (a) shall assist the United States Executive Director with respect to whom such officer is appointed in promoting opportunities for exports of goods and services from the United States by doing the following:

(1) Acting as the liaison between the business community and the multilateral development bank involved, whether or not the bank has offices in the United States. The Secretary of Commerce shall ensure that the procurement officer has access to, and disseminates to United States businesses, information relating to projects which are being proposed by the multilateral development bank, and bid specifications and deadlines for projects about to be developed by the bank. The procurement officer shall make special efforts to disseminate such information to small and medium-sized businesses interested in participating in such projects. The procurement officer shall explore opportunities for disseminating such information through private sector, nonprofit organizations.

(2) Taking actions to assure that United States businesses are fully informed of bidding opportunities for projects for which loans have been made by the multilateral development bank involved.

(3) Taking actions to assure that United States businesses can focus on projects in which they have a particular interest or competitive advantage, and to permit them to compete and have an equal opportunity in submitting timely and conforming bidding documents.

(c) DEFINITION.—As used in this section, the term "multilateral development bank" includes the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Inter-American Investment Corporation, the Asian Development Bank, the African Development Bank, and the African Development Fund.

SEC. 2303. MARKET DEVELOPMENT COOPERATOR PROGRAM.

(a) AUTHORITY OF SECRETARY OF COMMERCE.—In order to promote further the exportation of goods and services from the United States, the Secretary of Commerce is authorized to establish, in the International Trade Administration of the Department of Commerce, a Market Development Cooperator Program. The purpose of the program is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.

(b) IMPLEMENTATION OF THE PROGRAM.—The Secretary of Commerce shall carry out the Market Development Cooperator Program by entering into contracts with—

(1) nonprofit industry organizations,

(2) trade associations,

(3) State departments of trade and their regional associations, including centers for international trade development, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

(in this section referred to as "cooperators") to engage in activities in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a). The costs of activities under such a contract shall be shared equitably among the Department of Commerce, the cooperator involved, and, whenever appropriate, foreign businesses. The Department of Commerce shall undertake to support direct costs of activities under such a contract, and the cooperator shall undertake to support indirect costs of such activities. Activities under such a contract shall be carried out by the cooperator with the approval and assistance of the Secretary.

(c) COOPERATOR PARTNERSHIP PROGRAM.—

(1) IN GENERAL.—(A) As part of the Market Development Cooperator Program established under subsection (a), the Secretary of Commerce shall establish a partnership program with cooperators under which a cooperator may detail individuals, subject to the approval of the Secretary, to the United States and Foreign Commercial Service for a period of not less than 1 year or more than 2 years to supplement the Commercial Service.

(B) Any individual detailed to the United States and Foreign Commercial Service under this subsection shall be responsible for such duties as the Secretary may prescribe in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a).

(C) Individuals detailed to the United States and Foreign Commercial Service under this subsection shall not be considered to be employees of the United States for the purposes of any law administered by the Office of Personnel Management, except that the Secretary of State may determine the applicability to such individuals of section 2(f) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(f)) and of any other law administered by the Secretary of State concerning the detail of such individuals abroad.

(2) QUALIFICATIONS OF PARTICIPANTS.—In order to qualify for the program established under this subsection, individuals shall have demonstrated expertise in the international business arena in at least 2 of the following areas: marketing, market research, and computer data bases.

(3) EXPENSES OF THE PROGRAM.—(A) The cooperator who details an individual to the United States and Foreign Commercial Service under this subsection shall be responsible for that individual's salary and related expenses, including health care, life insurance, and other noncash benefits, if any, normally paid by such cooperator.

(B) The Secretary of Commerce shall pay transportation and housing costs for each individual participating in the program established under this subsection.

(d) BUDGET ACT.—Contracts may be entered into under this section in a fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

SEC. 2304. TRADE SHOWS.

(a) AUTHORITY OF THE SECRETARY OF COMMERCE.—In order to facilitate exporting by United States businesses, the Secretary of Commerce shall provide assistance for trade shows in the United States which bring together representatives of United States businesses seeking to export goods or services produced in the United States and representatives of foreign companies or governments seeking to buy such goods or services from these United States businesses.

(b) RECIPIENTS OF ASSISTANCE.—Assistance under subsection (a) may be provided to—

(1) nonprofit industry organizations,

(2) trade associations,

(3) foreign trade zones, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

to provide the services necessary to operate trade shows described in subsection (a).

(c) ASSISTANCE TO SMALL BUSINESSES.—In providing assistance under this section, the Secretary of Commerce shall, in consultation with the Administrator of the Small Business Administration, make special efforts to facilitate participation by small businesses and companies new to export.

(d) USES OF ASSISTANCE.—Funds appropriated to carry out this section shall be used to—

(1) identify potential participants for trade show organizers,

(2) provide information on trade shows to potential participants,

(3) supply language services for participants, and

(4) provide information on trade shows to small businesses and companies new to export.

(e) DEFINITIONS.—As used in this section—

(1) the term "United States business" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State (including the District of Columbia or any commonwealth,

territory, or possession of the United States); or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B); and

(2) the term "small business" means any small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 2305. AUTHORIZATION OF APPROPRIATIONS FOR EXPORT PROMOTION PROGRAMS.

(a) DEFINITION OF EXPORT PROMOTION PROGRAM.—Section 201(d) of the Export Administration Amendments Act of 1985 (15 U.S.C. 4051(d)) is amended—

(1) in paragraph (3) by striking "and" after the semicolon;

(2) in paragraph (4) by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(5) the Market Development Cooperator Program established under section 2303 of the Export Enhancement Act of 1988, and assistance for trade shows provided under section 2304 of that Act.".

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) Section 202 of the Export Administration Amendments Act of 1985 (15 U.S.C. 4052) is amended to read as follows:

"There are authorized to be appropriated to the Department of Commerce to carry out export promotion programs $123,922,000 for the fiscal year 1988, and $146,400,000 for each of the fiscal years 1989 and 1990.".

(2) In addition to funds otherwise available, there are authorized to be appropriated to the Department of Commerce to carry out sections 2303 and 2304 of this Act $6,000,000 for each of the fiscal years 1988, 1989, and 1990.

SEC. 2306. UNITED STATES AND FOREIGN COMMERCIAL SERVICE PACIFIC RIM INITIATIVE.

(a) IN GENERAL.—In order to encourage the export of United States goods and services to Japan, South Korea, and Taiwan, the United States and Foreign Commercial Service shall make a special effort to—

(1) identify United States goods and services which are not being exported to the markets of Japan, South Korea, and Taiwan but which could be exported to these markets under competitive market conditions;

(2) identify and notify United States persons who sell or provide such goods or services of potential opportunities identified under paragraph (1);

(3) present, periodically, a list of the goods and services identified under paragraph (1), together with a list of any impediments to the export of such goods and services, to appropriate authorities in Japan, South Korea, and Taiwan, with a view toward liberalizing markets to such goods and services;

(4) facilitate the entrance into such markets by United States persons identified and notified under paragraph (2); and

(5) monitor and evaluate the results of efforts to increase the sale of goods and services in such markets.

(b) REPORTS TO THE CONGRESS.—The Secretary of Commerce shall report periodically to the Congress on activities carried out under subsection (a).

(c) DEFINITION.—As used in this section, the term "United States person" means—

(1) a United States citizen; or

(2) a corporation, partnership, or other association created under the laws of the United States or any State (including the District of Columbia or any commonwealth, territory, or possession of the United States).

SEC. 2307. INDIAN TRIBES EXPORT PROMOTION.

(a) ASSISTANCE AUTHORIZED.—The Secretary of Commerce is authorized to provide assistance to eligible entities for the development of foreign markets for authentic American Indian arts and crafts. Eligible entities under this section include Indian tribes, tribal organizations, tribal enterprises, craft guilds, marketing cooperatives, and individual Indian-owned businesses.

(b) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—Activities eligible for assistance under this section include, but are not limited to, conduct of market surveys, development of promotional materials, financing of trade missions, participation in international trade fairs, direct marketing, and other market development activities.

(c) ADMINISTRATION OF ASSISTANCE.—Assistance under this section shall be administered by the Secretary of Commerce under guidelines developed by the Secretary. Priority shall be given to projects which support the establishment of long term, stable international markets for American Indian arts and crafts and which are designed to provide the greatest economic benefit to American Indian artisans.

(d) TECHNICAL AND OTHER ASSISTANCE.—The Secretary of Commerce shall provide technical assistance and support services to applicants eligible for and entities receiving assistance under this section for the purpose of helping them in identifying and entering appropriate foreign markets, complying with foreign and domestic legal and banking requirements regarding the export and import of arts and crafts, and utilizing import and export financial arrangements, and shall provide such other assistance as may be necessary to support the development of export markets for American Indian arts and crafts.

(e) LIMITATION ON ASSISTANCE.—No assistance shall be provided under this section in support of any activity which includes the sale or marketing of any craft items other than authentic arts and crafts hand made or hand crafted by American Indian artisans.

SEC. 2308. PRINTING AT OVERSEAS LOCATIONS.

(a) PRINTING IN CONJUNCTION WITH EXPORT PROMOTION PROGRAMS.—Section 201 of the Export Administration Amendments Act of 1985 (15 U.S.C. 4051) is amended by adding at the end the following:

"(e) PRINTING OUTSIDE THE UNITED STATES.—(1) Notwithstanding the provisions of section 501 of title 44, United States Code, and consistent with other applicable law, the Secretary of Commerce, in carrying out any export promotion program, may authorize—

"(A) the printing, distribution, and sale of documents outside the contiguous United States, if the Secretary finds that the implementation of such export promotion program would be more efficient, and if such documents will be distributed primarily and sold exclusively outside the United States; and

"(B) the acceptance of private notices and advertisements in connection with the printing and distribution of such documents.

"(2) Any fees received by the Secretary pursuant to paragraph (1) shall be deposited in a separate account or accounts which may be used to defray directly the costs incurred in conducting activities authorized by paragraph (1) or to repay or make advances to appropriations or other funds available for such activities.".

SEC. 2309. LOCAL CURRENCIES UNDER PUBLIC LAW 480.

Section 108(i) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1708(i)) is amended—

(1) in paragraph (1) by striking "and";

(2) in paragraph (2) by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(3) the terms 'private sector development activity' and 'private enterprise investment' include the construction of low- and medium-income housing and shelter.".

SEC. 2310. OFFICE OF EXPORT TRADE.

Section 104 of the Export Trading Company Act of 1982 (15 U.S.C. 4003) is amended by adding at the end the following: "The office shall establish a program to encourage and assist the operation of other export intermediaries, including existing and newly formed export management companies.".

SEC. 2311. REPORT ON EXPORT TRADING COMPANIES.

Not later than 18 months after the date of the enactment of this Act, the Secretary of Commerce shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and to the Committee on Banking, Finance, and Urban Affairs, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives, on the activities of the Department of Commerce to promote and encourage the formation of new and the operation of existing and new export promotion intermediaries, including export management companies, export trade associations, bank export trading companies, and export trading companies. The report shall include a survey of the activities of export management companies, export trade associations, and those bank export trading companies and export trading companies established pursuant to the amendments made by title II of the Export Trading Company Act of 1982, and pursuant to title III of that Act. The report shall not contain any information subject to the protections from disclosure provided in that Act.

Subtitle D—Export Controls

SEC. 2401. REFERENCE TO THE EXPORT ADMINISTRATION ACT OF 1979.

For purposes of this subtitle, the Export Administration Act of 1979 shall be referred to as "the Act".

PART I—EXPORT CONTROLS GENERALLY

SEC. 2411. EXPORT LICENSE FEES.

Section 4 of the Act (50 U.S.C. App. 2403) is amended by adding at the end the following:

"(g) FEES.—No fee may be charged in connection with the submission or processing of an export license application.".

SEC. 2412. MULTIPLE LICENSE AUTHORITY.

Section 4(a)(2) of the Act (50 U.S.C. App. 2403(a)(2)) is amended—

(1) in subparagraph (A) by striking the period at the end of the first sentence and inserting ", except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China."; and

(2) in subparagraph (B) in the first sentence by inserting "(except the People's Republic of China)" after "controlled countries".

SEC. 2413. DOMESTIC SALES TO COMMERCIAL ENTITIES OF CONTROLLED COUNTRIES.

Section 5(a)(1) of the Act (50 U.S.C. App. 2404(a)(1)) is amended by inserting after the second sentence the following: "For purposes of the preceding sentence, the term 'affili-

ates' includes both governmental entities and commercial entities that are controlled in fact by controlled countries.".

SEC. 2414. AUTHORITY FOR REEXPORTS.

Section 5(a) of the Act (50 U.S.C. App. 2404(a)) is amended by adding at the end the following:

"(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

"(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

"(i) supercomputers;

"(ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);

"(iii) devices for surreptitious interception of wire or oral communications; and

"(iv) goods or technology intended for such end users as the Secretary may specify by regulation.

"(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

"(i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or

"(ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the 'controlled United States content' of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

"(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

"(6) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term 'supercomputer' for purposes of those paragraphs.".

SEC. 2415. EXPORTS TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.

(a) COCOM COUNTRIES.—Section 5(b)(2) of the Act (50 U.S.C. App. 2404(b)(2)) is amended to read as follows:

"(2)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee.

"(B)(i) The Secretary may require a license for the export of goods or technology described in subparagraph (A) to such end users as the Secretary may specify by regulation.

"(ii) The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

"(C) The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988, determine which countries referred to in subparagraph (A) are implementing an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

"(i) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

"(ii) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

"(iii) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

"(iv) a system of export control documentation to verify the movement of goods and technology; and

"(v) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determinations made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.".

(b) COUNTRIES OTHER THAN COCOM COUNTRIES.—Section 5(b) of the Act (50 U.S.C. App. 2404(b)) is amended by adding at the end the following:

"(3)(A) No authority or permission may be required under this section to export to any country, other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

"(B) The Secretary may require any person exporting any goods or technology under subparagraph (A) to notify the Secretary of those exports.".

SEC. 2416. CONTROL LIST.

(a) RESOLUTION OF DISPUTES.—Section 5(c)(2) of the Act (50 U.S.C. App. 2404(c)(2)) is amended by striking the last sentence and inserting the following: "If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.".

(b) CONDUCT OF LIST REVIEWS.—

(1) CONTROL LIST.—Section 5(c)(3) of the Act is amended to read as follows:

"(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral export controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.".

(2) LIST OF MILITARILY CRITICAL TECHNOLOGIES.—Section 5(d)(5) of the Act (50 U.S.C. App. 2404(d)(5)) is amended in the first sentence by striking "at least annually" and inserting "on an ongoing basis".

(3) TECHNICAL ADVISORY COMMITTEES.—(A) Section 5(c) of the Act is amended by adding at the end the following:

"(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.".

(c) CONTROL LIST REDUCTION.—

(1) IN GENERAL.—Section 5(c) of the Act (50 U.S.C. App. 2404(c)) (as amended by subsection (b)(3) of this section) is further amended by adding at the end the following:

"(5)(A) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

"(i) All goods or technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the Coordinating Committee agrees to maintain such notification requirement.

"(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

"(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.".

(2) ELIMINATION OF UNILATERAL CONTROLS.—Section 5(c) of the Act (as amended by subsection (b)(3) and paragraph (1) of this subsection) is further amended by adding at the end the following:

"(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except that—

"(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

"(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

"(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.".

(3) REVIEW OF CERTAIN LOW TECHNOLOGY ITEMS.—Section 5(c) of the Act (as amended by subsection (b)(3) and paragraphs (1) and (2) of this subsection) is further amended by adding at the end the following:

"(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the Federal Register on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary—

"(A) shall determine the truth of the allegation;

"(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

"(C) shall, pursuant to such review, submit a finding for publication in the Federal Register.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.".

SEC. 2417. TRADE SHOWS.

Section 5(e) of the Act (50 U.S.C. App. 2404(e)) is amended by adding at the end the following:

"(6) Any application for a license for the export to the People's Republic of China of any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if—

"(A) the United States exporter retains title to the good during the entire period in which the good is in the People's Republic of China; and

"(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.".

SEC. 2418. FOREIGN AVAILABILITY.—

(a) IN GENERAL.—Section 5(f) of the Act (50 U.S.C. App. 2404(f)) is amended to read as follows:

"(f) FOREIGN AVAILABILITY.—

"(1) FOREIGN AVAILABILITY TO CONTROLLED COUNTRIES.—(A) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

"(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

"(2) FOREIGN AVAILABILITY TO OTHER THAN CONTROLLED COUNTRIES.—(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section), the Secretary may not, after the determination is made and during the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place controls on the export of such goods or technology. The requirement with respect to a validated license in the preceding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

"(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

"(3) PROCEDURES FOR MAKING DETERMINATIONS.—(A) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted

by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this subparagraph, 'evidence' may include such items as foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

"(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the Federal Register notice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

"(i) the foreign availability does exist and—

"(I) the requirement of a validated license has been removed,

"(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

"(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

"(ii) the foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) to which clause (i)(III) applies, no license for such export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

"(4) NEGOTIATIONS TO ELIMINATE FOREIGN AVAILABILITY.—(A) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has begun such negotiations and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

"(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

"(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

"(5) EXPEDITED LICENSES FOR ITEMS AVAILABLE TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.—(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

"(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

"(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

"(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

"(6) OFFICE OF FOREIGN AVAILABILITY.—The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year, information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Commercial Service Officers of the United States and Foreign Commercial Service. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

"(7) SHARING OF INFORMATION.—Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

"(8) REMOVAL OF CONTROLS ON LESS SOPHISTICATED GOODS OR TECHNOLOGY.—In any case in which Secretary may not, pursuant to paragraph (1), (2), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

"(9) NOTICE OF ALL FOREIGN AVAILABILITY ASSESSMENTS.—Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Secretary shall publish notice of such assessment in the Federal Register.

"(10) AVAILABILITY DEFINED.—For purposes of this subsection and subsections (f) and (h), the term 'available in fact to controlled

countries' includes production or availability of any goods or technology in any country—

"(A) from which the goods or technology is not restricted for export to any controlled country; or

"(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.".

(b) TECHNICAL ADVISORY COMMITTEE DETERMINATIONS.—Section 5(h)(6) of the Act (50 U.S.C. App. 2404(h)(6)) is amended by adding at the end the following: "After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.".

(c) TECHNICAL AMENDMENT.—Section 14(a)(8) of the Act (50 U.S.C. 2413(a)(8)) is amended by striking "5(f)(5)" and inserting "5(f)(6)".

SEC. 2419. REVIEW OF TECHNOLOGY LEVELS.

Section 5(g) of the Act (50 U.S.C. 2404(g)) is amended—

(1) by inserting "(1)" immediately before the first sentence; and

(2) by adding at the end the following:

"(2)(A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology—

"(i) which are eligible for export under a distribution license,

"(ii) below which exports to the People's Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

"(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

"(B) In any case in which the Secretary receives a request which—

"(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under a distribution license, and

"(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section,

the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.".

SEC. 2420. FUNCTIONS OF TECHNICAL ADVISORY COMMITTEES.

(a) CONSULTATION ON REVISIONS OF CONTROL LIST AND ON REGULATIONS.—Section 5(h)(2) of the Act (50 U.S.C. 2404(h)(2)) is amended—

(1) by redesignating clause (E) as clause (F); and

(2) by striking clause (D) and inserting the following: "(D) revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and".

(b) REVIEW OF REGULATIONS.—Section 15(b) of the Act (50 U.S.C. App. 2414(b)) is amended in the third sentence—

(1) by striking "and such other" and inserting "such other"; and

(2) by inserting after "appropriate" the following: ", and the appropriate technical advisory committee".

SEC. 2421. NEGOTIATIONS WITH COCOM.

(a) NEGOTIATING OBJECTIVES.—Section 5(i) of the Act (50 U.S.C. App. 2404(i)) is amended by striking "The President" and inserting "Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President".

(b) INDUSTRY REPRESENTATIVE TO COCOM.—Section 5(i) of the Act is amended by adding at the end the following:

"For purposes of reviews of the International Control List, the President may include as advisors to the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.".

SEC. 2422. GOODS CONTAINING MICROPROCESSORS OR CERTAIN OTHER PARTS OR COMPONENTS.

Section 5(m) of the Act (50 U.S.C. 2404(m)) is amended to read as follows:

"(m) GOODS CONTAINING CONTROLLED PARTS AND COMPONENTS.—Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

"(1) are essential to the functioning of the good,

"(2) are customarily included in sales of the good in countries other than controlled countries, and

"(3) comprise 25 percent or less of the total value of the good,

unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.".

SEC. 2423. FOREIGN POLICY CONTROLS.

(a) DIPLOMATIC ALTERNATIVES.—Section 6(a) of the Act (50 U.S.C. 2405(a)) is amended by adding at the end the following:

"(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.".

(b) SPARE PARTS.—Section 6 of the Act (50 U.S.C. App. 2405) is amended by adding at the end the following:

"(p) SPARE PARTS.—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

"(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.".

SEC. 2424. EXPORTS OF DOMESTICALLY PRODUCED CRUDE OIL.

(a) RESTRICTIONS ON EXPORT REFINERIES.—Section 7(d) of the Act (50 U.S.C. App. 2406(d)) is amended by striking paragraph (4) and inserting the following:

"(4)(A) Subject to subparagraph (B), the provisions of paragraphs (1) through (3) of this subsection shall apply to the export of refined petroleum products, and partially refined petroleum products (from Alaska or from the rest of the United States in an untransformed or uncommingled state), which are produced, from crude oil subject to the prohibition contained in paragraph (1), by an oil refinery which is located in the State of Alaska and which commences commercial operations on or after the date of the enactment of the Export Enhancement Act of 1988, to the same extent as the provisions of paragraphs (1) through (3) of this subsection apply to the export of domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act.

"(B)(i) Without regard to the provisions of paragraphs (1) through (3) of this subsection, but subject to clause (ii), up to 50 percent of all refined petroleum products, and partially refined petroleum products, which are produced, from crude oil subject to the prohibition contained in paragraph (1), by an oil refinery described in subparagraph (A) during the 1-year period beginning on the date on which the refinery commences commercial operations, and during each 1-year period occurring successively thereafter, may be exported. For purposes of determining, under this clause, the percentage of refined petroleum products and partially refined petroleum products of a refinery that are exported, there shall be excluded sales of refined petroleum products or partially refined petroleum products to any military department of the United States or to any air carrier as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301), and such sales shall not be subject to subparagraph (A) except to the extent provided in clause (ii).

"(ii) Notwithstanding clause (i), exports in excess of an average of 70,000 barrels per day, in the 1-year period beginning on the date of the enactment of the Export Enhancement Act of 1988, and in each 1-year period occurring successively thereafter, of all refined petroleum products, and partial-

ly refined petroleum products, which are produced, from crude oil subject to the prohibition contained in paragraph (1), by all oil refineries described in subparagraph (A), shall be subject to paragraphs (1) through (3) of this subsection.

"(C) For purposes of this paragraph—

"(i) the term 'refined petroleum product' means gasoline, kerosene, distillates, ethane, propane, butane, diesel fuel, and residual fuel oil; and

"(ii) the term 'partially refined petroleum product' means a mixture of hydrocarbons which existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, and which has been processed through a crude oil distillation tower, including topped crude oil and other unfinished oils, but not including any refined petroleum product.

"(D) Within 180 days after the date of the enactment of this paragraph, the Secretary shall issue such regulations as may be necessary to carry out this paragraph and paragraph (5).

"(5) The provisions of paragraphs (1) through (4) of this subsection shall not apply to the export of ethane, propane, or butane separated from crude oil that is subject to the prohibition contained in paragraph (1) and that has passed through a separation facility, except that the crude oil remaining after such separation shall not be considered to be a refined petroleum product or partially refined petroleum product and shall continue to be subject to the provisions of paragraph (1) through (3) of this subsection.

"(6) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185(u)), during any period when the United States-Canada Free-Trade Agreement, signed on January 2, 1988, is in force and effect, up to a maximum volume of 50,000 barrels per day, on an annual average basis, of crude oil subject to the prohibition contained in paragraph (1) may be exported to Canada, subject to the condition that such crude oil be transported to Canada from a suitable location within the lower 48 States.".

(b) CRUDE OIL STUDY.—

(1) REVIEW OF EXPORT RESTRICTIONS ON CRUDE OIL.—The Secretary of Commerce, in consultation with the Secretary of Energy, shall undertake a comprehensive review to assess whether existing statutory restrictions on the export of crude oil produced in the contiguous United States are adequate to protect the energy and national security interests of the United States and American consumers. Taking into account exports licensed since 1983 and potential exports of heavy crude oil produced in California, the review shall assess the effect of increased exports of crude oil produced in the contiguous United States on—

(A) the adequacy of domestic supplies of crude oil and refined petroleum products in meeting United States energy and national security needs;

(B) the quantity, quality, and retail price of petroleum products available to consumers in the United States generally and on the West Coast in particular;

(C) the overall trade deficit of the United States;

(D) acquisition costs of crude oil by domestic petroleum refiners;

(E) the financial viability of sectors of the domestic petroleum industry (including independent refiners, distributors, marketers, and pipeline carriers); and

(F) the United States tanker fleet (and the industries that support it), with particular emphasis on the availability of militarily useful tankers to meet anticipated national defense requirements.

(2) PUBLIC HEARING AND COMMENT.—The Secretary of Commerce shall provide notice and a reasonable opportunity for public hearing and comment on the review conducted pursuant to this subsection.

(3) CONSULTATIONS WITH OTHER AGENCIES.—The Secretary of Commerce shall consult with the Secretary of Defense, the Secretary of the Interior, and the Secretary of Transportation, in addition to the Secretary of Energy, in undertaking the review pursuant to this subsection.

(4) FINDINGS, OPTIONS, AND RECOMMENDATIONS.—After taking public comment and consulting with appropriate State and Federal officials, the Secretary of Commerce, in consultation with the Secretary of Energy, shall develop findings, options, and recommendations regarding the adequacy of existing statutory restrictions on the export of crude oil produced in the contiguous United States in protecting the energy and national security interests of the United States and American consumers.

(5) CONSULTATIONS AND REPORT.—In carrying out this subsection, the Secretary of Commerce shall consult with the Committee on Foreign Affairs and the Committee on Energy and Commerce of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on Energy and Natural Resources of the Senate. Not later than 12 months after the date of the enactment of this Act, the Secretary shall transmit to each of those committees a report which contains the results of the review undertaken pursuant to this subsection and the findings, options, and recommendations developed under paragraph (4).

SEC. 2425. PROCEDURES FOR LICENSE APPLICATIONS.

(a) REVIEW OF LICENSE APPLICATIONS BY THE SECRETARY OF DEFENSE.—Section 10(g) of the Act (50 U.S.C. App. 2409(g)) is amended—

(1) in paragraph (2)(A) by inserting "and the Secretary" after "to the President";

(2) by inserting before the last sentence of paragraph (2) the following:

"Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense.";

(3) by adding at the end of paragraph (2) the following: "If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification."; and

(4) by striking paragraph (4).

(b) REPORT BY SECRETARIES OF COMMERCE AND DEFENSE.—The Secretary of Commerce and the Secretary of Defense shall each evaluate and, not later than 4 months after the date of the enactment of this Act, shall jointly prepare and submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the review by the Department of Defense, for national security purposes as provided in the Export Administration Act of 1979, of export license applications for exports to countries other than controlled countries under section 5(b)(1) of that Act.

(c) REPORT ON SMALL BUSINESSES.—Section 10(m) of the Act (50 U.S.C. App. 2409(m)) is amended by adding at the end the following: "The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988, report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.".

SEC. 2426. VIOLATIONS.

Section 11(h) of the Act (50 U.S.C. App. 2410(h)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" before "No"; and

(B) by inserting after "violation of" the following: "this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act,"; and

(2) by adding at the end the following:

"(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.".

SEC. 2427. ENFORCEMENT.

Section 12(a)(2)(B) of the Act (50 U.S.C. App. 2411(a)(2)(B)) is amended by adding at the end the following: "The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.".

SEC. 2428. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.

(a) JUDICIAL REVIEW.—(1) Section 13(c) of the Act (50 U.S.C. App. 2412(c)) is amended—

(A) in the last sentence of paragraph (1) by inserting before the period ", except as provided in paragraph (3)";

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

"(3) The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any

conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

(2) Section 13(d) of the Act (50 U.S.C. App. 2412(d)) is amended—

(A) in the fifth sentence of paragraph (2) by inserting before the period ", except as provided in paragraph (3)"; and

(B) by adding at the end of paragraph (2) the following:

"All materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the courts.

"(3) An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

(b) ISSUANCE OF TEMPORARY DENIAL ORDERS.—Section 13(d)(1) of the Act (50 U.S.C. App. 2412(d)(1)) is amended in the second sentence by striking "60" each place it appears and inserting "180".

SEC. 2429. RESPONSIBILITIES OF THE UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION.

Section 15(a) of the Act (50 U.S.C. App. 2414(a)) is amended by inserting "and such other statutes that relate to national security" after "functions of the Secretary under this Act".

SEC. 2430. AUTHORIZATION OF APPROPRIATIONS.

Section 18(b) of the Act (50 U.S.C. App. 2417(b)) is amended—

(1) in paragraph (1)—

(A) by striking "each of the fiscal years 1987 and 1988" and inserting "the fiscal year 1988";

(B) by striking "for each such year" each place it appears; and

(C) by striking "and" after the semicolon; and

(2) by striking paragraph (2) and inserting the following:

"(2) $46,913,000 for the fiscal year 1989, of which $15,000,000 shall be available only for enforcement, $5,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, $4,000,000 shall be available only for regional export control assistance centers, and $22,913,000 shall be available for all other activities under this Act; and

"(3) such additional amounts for each of the fiscal years 1988 and 1989 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.".

SEC. 2431. TERMINATION DATE.

Section 20 of the Act (50 U.S.C. 2419) is amended by striking "1989" and inserting "1990".

SEC. 2432. MONITORING OF WOOD EXPORTS.

The Secretary of Commerce shall, for a period of 2 years beginning on the date of the enactment of this Act, monitor exports of processed and unprocessed wood to all countries of the Pacific Rim. The Secretary shall include the results of such monitoring in monthly reports setting forth, with respect to each item monitored, actual exports, the destination by country, and the domestic and worldwide price, supply, and demand. The Secretary shall transmit such reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 2433. STUDY ON NATIONAL SECURITY EXPORT CONTROLS.

(a) ARRANGEMENTS FOR AND CONTENTS OF STUDY.—

(1) ARRANGEMENTS FOR CONDUCTING STUDY.—The Secretary of Commerce and the Secretary of Defense, not later than 60 days after the date of the enactment of this Act, shall enter into appropriate arrangements with the National Academy of Sciences and the National Academy of Engineering (hereafter in this section referred to as the "Academies") to conduct a comprehensive study of the adequacy of the current export administration system in safeguarding United States national security while maintaining United States international competitiveness and Western technological preeminence.

(2) REQUIREMENTS OF STUDY.—Recognizing the need to minimize the disruption of United States trading interests while preventing Western technology from enhancing the development of the military capabilities of controlled countries, the study shall—

(A) identify those goods and technologies which are likely to make crucial differences in the military capabilities of controlled countries, and identify which of those goods and technologies controlled countries already possess or are available to controlled countries from other sources;

(B) develop implementable criteria by which to define those goods and technologies;

(C) demonstrate how such criteria would be applied to the control list by the relevant agencies to revise the list, eliminate ineffective controls, and strengthen controls;

(D) develop proposals to improve United States and multilateral assessments of foreign availability of goods and technology subject to export controls; and

(E) develop proposals to improve the administration of the export control program, including procedures to ensure timely, predictable, and effective decision-making.

(b) ADVISORY PANEL.—In conducting the study under subsection (a), the Academies shall appoint an Advisory Panel of not more than 24 members who shall be selected from among individuals in private life who, by virtue of their experience and expertise, are knowledgeable in relevant scientific, business, legal, or administrative matters. No individual may be selected as a member who, at the time of his or her appointment, is an elected or appointed official or employee in the executive, legislative, or judicial branch of the Government. In selecting members of the Advisory Panel, the Academies shall seek suggestions from the President, the Congress, and representatives of industry and the academic community.

(c) EXECUTIVE BRANCH COOPERATION.—The Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Director of the Central Intelligence Agency, and the head of any department or agency that exercises authority in export administration—

(1) shall furnish to the Academies, upon request and under appropriate safeguards, classified or unclassified information which the Academies determine to be necessary for the purposes of conducting the study required by this section; and

(2) shall work with the Academies on such problems related to the study as the Academies consider necessary.

(d) REPORT.—Under the direction of the Advisory Panel, the Academies shall prepare and submit to the President and the Congress, not later than 18 months after entering into the arrangements referred to in subsection (a), a report which contains a detailed statement of the findings and conclusions of the Academies pursuant to the study conducted under subsection (a), together with their recommendations for such legislative or regulatory reforms as they consider appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $900,000 to carry out this section.

PART II—MULTILATERAL EXPORT CONTROL ENHANCEMENT

SEC. 2441. SHORT TITLE.

This part may be cited as the "Multilateral Export Control Enhancement Amendments Act".

SEC. 2442. FINDINGS.

The Congress makes the following findings:

(1) The diversion of advanced milling machinery to the Soviet Union by the Toshiba Machine Company and Kongsberg Trading Company has had a serious impact on United States and Western security interests.

(2) United States and Western security is undermined without the cooperation of the governments and nationals of all countries participating in the group known as the Coordinating Committee (hereafter in this part referred to as "COCOM") in enforcing the COCOM agreement.

(3) It is the responsibility of all governments participating in COCOM to place in effect strong national security export control laws, to license strategic exports carefully, and to enforce those export control laws strictly, since the COCOM system is only as strong as the national laws and enforcement on which it is based.

(4) It is also important for corporations to implement effective internal control systems to ensure compliance with export control laws.

(5) In order to protect United States national security, the United States must take steps to ensure the compliance of foreign companies with COCOM controls, including, where necessary conditions have been met, the imposition of sanctions against violators of controls commensurate with the severity of the violation.

SEC. 2443. MANDATORY SANCTIONS AGAINST TOSHIBA AND KONGSBERG.

(a) SANCTIONS AGAINST TOSHIBA MACHINE COMPANY, KONGSBERG TRADING COMPANY, AND CERTAIN OTHER FOREIGN PERSONS.—(1) The President shall impose, for a period of 3 years—

(1) a prohibition on contracting with, and procurement of products and services from—

(A) Toshiba Machine Company and Kongsberg Trading Company, and

(B) any other foreign person whom the President finds to have knowingly facilitated the diversion of advanced milling machinery by Toshiba Machine Company and Kongsberg Trading Company to the Soviet Union,

by any department, agency, or instrumentality of the United States Government; and

(2) a prohibition on the importation into the United States of all products produced by Toshiba Machine Company, Kongsberg Trading Company, and any foreign person described in paragraph (1)(B).

(b) SANCTIONS AGAINST TOSHIBA CORPORATION AND KONGSBERG VAAPENFABRIKK.—The President shall impose, for a period of 3 years, a prohibition on contracting with, and procurement of products and services from, the Toshiba Corporation and Kongsberg Vaapenfabrikk, by any department, agency, or instrumentality of the United States Government.

(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the company or foreign person to whom the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before June 30, 1987;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "component part" means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term "finished product" means any article which is usable for its intended functions without being imbedded in or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term "sanctioned person" means a company or other foreign person upon whom prohibitions have been imposed under subsection (a) or (b).

SEC. 2444. MANDATORY SANCTIONS FOR FUTURE VIOLATIONS.

The Act is amended by inserting after section 11 the following new section:

"MULTILATERAL EXPORT CONTROL VIOLATIONS

"SEC. 11A. (a) DETERMINATION BY THE PRESIDENT.—The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

"(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

"(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Securily Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988.

"(b) SANCTIONS.—The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:

"(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

"(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

"(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

"(1) in the case of procurement of defense articles or defense services—

"(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

"(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

"(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

"(2) to—

"(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

"(B) spare parts;

"(C) component parts, but not finished products, essential to United States products or production;

"(D) routine servicing and maintenance of products; or

"(E) information and technology.

"(d) EXCLUSION.—The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

"(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

"(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

"(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

"(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

"(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

"(D) a system of export control documentation to verify the movement of goods and technology; and

"(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

"(e) DEFINITIONS.—For purposes of this section—

"(1) the term 'component part' means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

"(2) the term 'finished product' means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

"(3) the term 'sanctioned person' means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

"(f) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

"(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

"(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

"(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

"(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

"(g) REPORTS TO CONGRESS.—The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

"(h) DISCRETIONARY IMPOSITION OF SANCTIONS.—If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

"(i) COMPENSATION FOR DIVERSION OF MILITARILY CRITICAL TECHNOLOGIES TO CONTROLLED COUNTRIES.—(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effect of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

"(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

"(j) OTHER ACTIONS BY THE PRESIDENT.—Upon making a determination under subsection (a) or (h), the President shall—

"(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

"(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

"(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

"(k) DAMAGES FOR CERTAIN VIOLATIONS.—(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

"(3) The total amount awarded in any case brought under paragraph (2) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

"(l) DEFINITION.—For purposes of this section, the term 'foreign person' means any person other than a United States person.".

SEC. 2445. ANNUAL REPORT OF DEFENSE IMPACT.

Section 14 of the Act (50 U.S.C. App. 2413) is amended by adding at the end the following new subsection:

"(f) ANNUAL REPORT OF THE PRESIDENT.—The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.".

SEC. 2446. IMPROVED MULTILATERAL COOPERATION.

Section 5(i) of the Act (50 U.S.C. App. 2404) (relating to multilateral export controls), as amended by section 2421 of this Act, is further amended by striking paragraphs (1) through (9) and inserting the following:

"(1) Enhanced public understanding of the Committee's purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

"(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

"(3) Strengthened legal basis for each government's export control system, including, as appropriate, increased penalties and statutes of limitations.

"(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

"(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

"(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

"(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

"(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

"(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

"(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

"(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.".

SEC. 2447. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TRADE EXPANSION ACT OF 1962.—Section 233 of the Trade Expansion Act of 1962 (19 U.S.C 1864) is amended—

(1) by striking out "(a)"; and

(2) by striking out subsection (b).

(b) DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1988.—Sections 8124 and 8129 of the Department of Defense Appropriations Act, 1988 (as contained in section 101(d) of Public Law 100-202) are repealed.

Subtitle E—Miscellaneous Provisions

SEC. 2501. TRADING WITH THE ENEMY ACT.

(a) TERMINATION OF OFFICE OF ALIEN PROPERTY.—(1) The Trading with the Enemy Act is amended by striking subsections (b) through (e) of section 39 (50 U.S.C. App. 39) and inserting the following new subsection:

"(b) The Attorney General shall cover into the Treasury, to the credit of miscellaneous receipts, all sums from property vested in or transferred to the Attorney General under this Act—

"(1) which the Attorney General receives after the date of the enactment of the Export Enhancement Act of 1988, or

"(2) which the Attorney General received before that date and which, as of that date, the Attorney General had not covered into the Treasury for deposit in the War Claims Fund, other than any such sums which the Attorney General determines in his or her discretion are the subject matter of any judicial action or proceeding.".

(2) Subsection (f) of such section is amended—

(A) by striking "(f)" and inserting "(c)"; and

(B) by striking "through (d)" and inserting "and (b)".

(b) REMOVAL OF REPORTING REQUIREMENT.—Section 6 of such Act (50 U.S.C. App. 6) is amended in the next to the last sentence by striking ": Provided further," and all that follows through the end of the section and inserting a period.

SEC. 2502. LIMITATION ON EXERCISE OF EMERGENCY AUTHORITIES.

(a) TRADING WITH THE ENEMY ACT.—(1) Section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) is amended by adding at the end the following new paragraph:

"(4) The authority granted to the President in this subsection does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.".

(2) The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act, do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as added by paragraph (1) of this subsection, may not be regulated or prohibited.

(b) INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—(1) Section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)) is amended—

(A) in paragraph (1) by striking "or" after the semicolon;

(B) in paragraph (2) by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.".

(2) The amendments made by paragraph (1) apply to actions taken by the President under section 203 of the International Emergency Economic Powers Act before the date of the enactment of this Act which are in effect on such date of enactment, and to actions taken under such section on or after such date of enactment.

SEC. 2503. BUDGET ACT.

Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this title shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.

TITLE III—INTERNATIONAL FINANCIAL POLICY

Subtitle A—Exchange Rates and International Economic Policy Coordination

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "Exchange Rates and International Economic Policy Coordination Act of 1988".

SEC. 3002. FINDINGS.

The Congress finds that—

(1) the macroeconomic policies, including the exchange rate policies, of the leading industrialized nations require improved coordination and are not consistent with long-term economic growth and financial stability;

(2) currency values have a major role in determining the patterns of production and trade in the world economy;

(3) the rise in the value of the dollar in the early 1980's contributed substantially to our current trade deficit;

(4) exchange rates among major trading nations have become increasingly volatile and a pattern of exchange rates has at times developed which contribute to substantial and persistent imbalances in the flow of goods and services between nations, imposing serious strains on the world trading system and frustrating both business and government planning;

(5) capital flows between nations have become very large compared to trade flows, respond at times quickly and dramatically to policy and economic changes, and, for these reasons, contribute significantly to uncertainty in financial markets, the volatility of exchange rates, and the development of exchange rates which produce imbalances in the flow of goods and services between nations;

(6) policy initiatives by some major trading nations that manipulate the value of their currencies in relation to the United States dollar to gain competitive advantage continue to create serious competitive problems for United States industries;

(7) a more stable exchange rate for the dollar at a level consistent with a more appropriate and sustainable balance in the United States current account should be a major focus of national economic policy;

(8) procedures for improving the coordination of macroeconomic policy need to be strengthened considerably; and

(9) under appropriate circumstances, intervention by the United States in foreign exchange markets as part of a coordinated international strategic intervention effort could produce more orderly adjustment of foreign exchange markets and, in combination with necessary macroeconomic policy changes, assist adjustment toward a more appropriate and sustainable balance in current accounts.

SEC. 3003. STATEMENT OF POLICY.

It is the policy of the United States that—

(1) the United States and the other major industrialized countries should take steps to continue the process of coordinating monetary, fiscal, and structural policies initiated in the Plaza Agreement of September 1985;

(2) the goal of the United States in international economic negotiations should be to achieve macroeconomic policies and exchange rates consistent with more appropriate and sustainable balances in trade and capital flows and to foster price stability in conjunction with economic growth;

(3) the United States, in close coordination with the other major industrialized countries should, where appropriate, participate in international currency markets with the objective of producing more orderly adjustment of foreign exchange markets and, in combination with necessary macroeconomic policy changes, assisting adjustment toward a more appropriate and sustainable balance in current accounts; and

(4) the accountability of the President for the impact of economic policies and exchange rates on trade competitiveness should be increased.

SEC. 3004. INTERNATIONAL NEGOTIATIONS ON EXCHANGE RATE AND ECONOMIC POLICIES.

(a) MULTILATERAL NEGOTIATIONS.—The President shall seek to confer and negotiate with other countries—

(1) to achieve—

(A) better coordination of macroeconomic policies of the major industrialized nations; and

(B) more appropriate and sustainable levels of trade and current account balances, and exchange rates of the dollar and other currencies consistent with such balances; and

(2) to develop a program for improving existing mechanisms for coordination and improving the functioning of the exchange rate system to provide for long-term exchange rate stability consistent with more appropriate and sustainable current account balances.

(b) BILATERAL NEGOTIATIONS.—The Secretary of the Treasury shall analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade. If the Secretary considers that such manipulation is occurring with respect to countries that (1) have material global current account surpluses; and (2) have significant bilateral trade surpluses with the United States, the Secretary of the Treasury shall take action to initiate negotiations with such foreign countries on an expedited basis, in the International Monetary Fund or bilaterally, for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of payments adjustments and to eliminate the unfair advantage. The Secretary shall not be required to initiate negotiations in cases where such negotiations would have a serious detrimental impact on vital national economic and security interests; in such cases, the Secretary shall inform the chairman and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives of his determination.

SEC. 3005. REPORTING REQUIREMENTS.

(a) REPORTS REQUIRED.—In furtherance of the purpose of this title, the Secretary, after consultation with the Chairman of the Board, shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, on or before October 15 of each year, a written report on international economic policy, including exchange rate policy. The Secretary shall provide a written update of developments six months after the initial report. In addition, the Secretary shall appear, if requested, before both committees to provide testimony on these reports.

(b) CONTENTS OF REPORT.—Each report submitted under subsection (a) shall contain—

(1) an analysis of currency market developments and the relationship between the United States dollar and the currencies of our major trade competitors;

(2) an evaluation of the factors in the United States and other economies that underlie conditions in the currency markets, including developments in bilateral trade and capital flows;

(3) a description of currency intervention or other actions undertaken to adjust the actual exchange rate of the dollar;

(4) an assessment of the impact of the exchange rate of the United States dollar on—

(A) the ability of the United States to maintain a more appropriate and sustainable balance in its current account and merchandise trade account;

(B) production, employment, and noninflationary growth in the United States;

(C) the international competitive performance of United States industries and the external indebtedness of the United States;

(5) recommendations for any changes necessary in United States economic policy to attain a more appropriate and sustainable balance in the current account;

(6) the results of negotiations conducted pursuant to section 3004;

(7) key issues in United States policies arising from the most recent consultation requested by the International Monetary Fund under article IV of the Fund's Articles of Agreement; and

(8) a report on the size and composition of international capital flows, and the factors contributing to such flows, including, where possible, an assessment of the impact of such flows on exchange rates and trade flows.

(c) REPORT BY BOARD OF GOVERNORS.—Section 2A(1) of the Federal Reserve Act (12 U.S.C. 225a(1)) is amended by inserting after "the Nation" the following: ", includ-

ing an analysis of the impact of the exchange rate of the dollar on those trends".

SEC. 3006. DEFINITIONS.

As used in this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(2) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

Subtitle B—International Debt

PART I—FINDINGS, PURPOSES, AND STATEMENT OF POLICY

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "International Debt Management Act of 1988".

SEC. 3102. FINDINGS.

The Congress finds that—

(1) the international debt problem threatens the safety and soundness of the international financial system, the stability of the international trading system, and the economic development of the debtor countries;

(2) orderly reduction of international trade imbalances requires very substantial growth in all parts of the world economy, particularly in the developing countries;

(3) growth in developing countries with substantial external debts has been significantly constrained over the last several years by a combination of high debt service obligations and insufficient new flows of financial resources to these countries;

(4) substantial interest payment outflows from debtor countries, combined with inadequate net new capital inflows, have produced a significant net transfer of financial resources from debtor to creditor countries;

(5) negative resource transfers at present levels severely depress both investment and growth in the debtor countries, and force debtor countries to reduce imports and expand exports in order to meet their debt service obligations;

(6) current adjustment policies in debtor countries, which depress domestic demand and increase production for export, help to depress world commodity prices and limit the growth of export markets for United States industries;

(7) the United States has borne a disproportionate share of the burden of absorbing increased exports from debtor countries, while other industrialized countries have increased their imports from developing countries only slightly;

(8) current approaches to the debt problem should not rely solely on new lending as a solution to the debt problem, and should focus on other financing alternatives including a reduction in current debt service obligations;

(9) new international mechanisms to improve the management of the debt problem and to expand the range of financing options available to developing countries should be explored; and

(10) industrial countries with strong current account surpluses have a disproportionate share of the world's capital resources, and bear an additional responsibility for contributing to a viable long-term solution to the debt problem.

SEC. 3103. PURPOSES.

The purposes of this subtitle are—

(1) to expand the world trading system and raise the level of exports from the United States to the developing countries in order to reduce the United States trade deficit and foster economic expansion and an increase in the standard of living throughout the world;

(2) to alleviate the current international debt problem in order to make the debt situation of developing countries more manageable and permit the resumption of sustained growth in those countries; and

(3) to increase the stability of the world financial system and ensure the safety and soundness of United States depository institutions.

SEC. 3104. STATEMENT OF POLICY.

It is the policy of the United States that—

(1) increasing growth in the developing world is a major goal of international economic policy;

(2) it is necessary to broaden the range of options in dealing with the debt problem to include improved mechanisms to restructure existing debt;

(3) active consideration of a new multilateral authority to improve the management of the debt problem and to share the burdens of adjustment more equitably must be undertaken; and

(4) countries with strong current account surpluses bear a major responsibility for providing the financial resources needed for growth in the developing world.

PART II—THE INTERNATIONAL DEBT MANAGEMENT AUTHORITY

SEC. 3111. INTERNATIONAL INITIATIVE.

(a) DIRECTIVE.—

(1) STUDY.—The Secretary of the Treasury shall study the feasibility and advisability of establishing the International Debt Management Authority described in this section.

(2) EXPLANATION OF DETERMINATIONS.—If the Secretary of the Treasury determines that initiation of international discussions with regard to such authority would (A) result in material increase in the discount at which sovereign debt is sold, (B) materially increase the probability of default on such debt, or (C) materially enhance the likelihood of debt service failure or disruption, the Secretary shall include in his interim reports to the Congress an explanation in detail of the reasons for such determination.

(3) INITIATION OF DISCUSSIONS.—Unless such a determination is made, the Secretary of the Treasury shall initiate discussions with such industrialized and developing countries as the Secretary may determine to be appropriate with the intent to negotiate the establishment of the International Debt Management Authority, which would undertake to—

(A) purchase sovereign debt of less developed countries from private creditors at an appropriate discount;

(B) enter into negotiations with the debtor countries for the purpose of restructuring the debt in order to—

(i) ease the current debt service burden on the debtor countries; and

(ii) provide additional opportunities for economic growth in both debtor and industrialized countries; and

(C) assist the creditor banks in the voluntary disposition of their Third World loan portfolio.

(b) OBJECTIVES.—In any discussions initiated under subsection (a), the Secretary should include the following specific proposals:

(1) That any loan restructuring assistance provided by such an authority to any debtor nation should involve substantial commitments by the debtor to (A) economic policies designed to improve resource utilization and minimize capital flight, and (B) preparation of an economic management plan calculated to provide sustained economic growth and to allow the debtor to meet its restructured debt obligations.

(2) That support for such an authority should come from industrialized countries, and that greater support should be expected from countries with strong current account surpluses.

(3) That such an authority should have a clearly defined close working relationship with the International Monetary Fund and the International Bank for Reconstruction and Development and the various regional development banks.

(4) That such an authority should be designed to operate as a self-supporting entity, requiring no routine appropriation of resources from any member government, and to function subject to the prohibitions contained in the first sentence of section 3112(a).

(5) That such an authority should have a defined termination date and a clear proposal for the restoration of creditworthiness to debtor countries within this timeframe.

(c) INTERIM REPORTS.—At the end of the 6-month period beginning on the date of enactment of this Act and at the end of the 12-month period beginning on such date of enactment, the Secretary of the Treasury shall submit a report on the progress being made on the study or in discussions described in subsection (a) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate, and shall consult with such committees after submitting each such report.

(d) FINAL REPORT.—On the conclusion of the study or of discussions described in subsection (a), the Secretary shall transmit a report containing a detailed description thereof to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate, together with such recommendations for legislation which the Secretary may determine to be necessary or appropriate for the establishment of the International Debt Management Authority.

SEC. 3112. ACTIONS TO FACILITATE CREATION OF THE AUTHORITY.

(a) IN GENERAL.—No funds, appropriations, contributions, callable capital, financial guarantee, or any other financial support or obligation or contingent support or obligation on the part of the United States Government may be used for the creation, operation, or support of the International Debt Management Authority specified in section 3111, without the express approval of the Congress through subsequent law, nor shall any expenses associated with such authority, either directly or indirectly, accrue to any United States person without the consent of such person. Except as restricted in the preceding sentence, the Secretary of the Treasury shall review all potential resources available to the multilateral financial institutions which could be used to support the creation of the International Debt Management Authority. In the course of this review, the Secretary shall direct—

(1) the United States Executive Director of the International Monetary Fund to determine the amount of, and alternative methods by which, gold stock of the Fund which, subject to action by its Board of Governors, could be pledged as collateral to obtain financing for the activities of the authority specified in section 3111; and

(2) the United States Executive Director to the International Bank for Reconstruction and Development to determine the amount of, and alternative methods by which, liquid

assets controlled by such Bank and not currently committed to any loan program which, subject to action by its Board of Governors, could be pledged as collateral for obtaining financing for the activities of the authority specified in section 3111.

The Secretary of the Treasury shall include a report on the results of the review in the first report submitted under section 3111(c).

(b) CONSTRUCTION OF SECTION.—Subsection (a) shall not be construed to affect any provision of the Articles of Agreement of the International Monetary Fund or of the International Bank for Reconstruction and Development or any agreement entered into under either of such Agreements.

SEC. 3113. IMF-WORLD BANK REVIEW.

(a) IMF REVIEW.—The United States Executive Director of the International Monetary Fund shall request the management of the International Monetary Fund to prepare a review and analysis of the debt burden of the developing countries, with particular attention to alternatives for dealing with the debt problem including new lending instruments, rescheduling and refinancing of existing debt, securitization and debt conversion techniques, discounted debt repurchases, and the International Debt Management Authority described in section 3111 no later than 1 year after the date of the enactment of this Act.

(b) WORLD BANK REVIEW.—The United States Executive Director to the International Bank for Reconstruction and Development shall request the management of the International Bank for Reconstruction and Development to prepare a review and analysis of the debt burden of the developing countries, with particular attention to alternatives for dealing with the debt problem including new lending instruments, rescheduling and refinancing of existing debt, securitization and debt conversion techniques, discounted debt repurchases, and the International Debt Management Authority described in section 3111 no later than 1 year after the date of the enactment of this Act.

PART III—REGULATORY PROVISIONS AFFECTING INTERNATIONAL DEBT

SEC. 3121. PROVISIONS RELATING TO THE REGULATION OF DEPOSITORY INSTITUTIONS.

(a) REGULATORY OBJECTIVES.—It is the sense of the Congress that regulations prescribed by Federal banking regulatory agencies which affect the international assets of United States commercial banks should grant the widest possible latitude to the banks for negotiating principal and interest reductions with respect to obligations of heavily indebted sovereign borrowers.

(b) FLEXIBILITY IN DEBT RESTRUCTURING.—It is the intent of the Congress that, in applying generally accepted accounting standards, Federal agencies which regulate and oversee the operations of depository institutions (within the meaning given to such term by clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) apply to such institutions maximum flexibility in determining the asset value of restructured loans to heavily indebted sovereign borrowers and in accounting for the effects of such restructuring prospectively.

(c) RECAPITALIZATION.—It is the intent of the Congress that Federal agencies which regulate and oversee the operations of depository institutions (within the meaning given to such term by clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) should require depository institutions with substantial amounts of loans to heavily indebted sovereign borrowers to seek, as appropriate, expanded recapitalization through equity financing to ensure that prudent institutional capital-to-total asset ratios are established and maintained.

(d) RESERVES FOR LOAN LOSSES.—It is the intent of the Congress that Federal agencies which regulate and oversee the operations of depository institutions (within the meaning given to such term by clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) should seek to ensure that appropriate levels of reserves be established by depository institutions engaged in substantial lending to heavily indebted sovereign borrowers in accordance with both the credit and country risks associated with such lending.

(e) DATA ON BANKS FOREIGN LOAN RISKS.—Section 913 of the International Lending Supervision Act of 1983 is amended by adding at the end thereof the following new subsection:

"(d) To ensure that Congress is fully informed of the risks to our banking system posed by troubled foreign loans, the Federal banking agencies, before March 31, 1989, and on April 30 of each succeeding year, shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and Committee on Banking, Finance and Urban Affairs of the House of Representatives a report that shall include the following:

"(1) The level of loan exposure of those banking institutions under the jurisdiction of each agency which is rated 'value-impaired', 'substandard', 'other transfer risk problems', or in any other troubled debt category as may be established by the banking agencies. This tabulation shall clearly identify aggregate loan exposures of the 9 largest United States banks under the agencies' jurisdiction, the aggregate loan exposures of the next 13 largest banks, and the aggregate exposure of all other such banks which have significant country risk exposures. This tabulation shall include a separate section identifying, to the extent feasible, new bank loans to countries with debt service problems which were made within the past year preceding the date on which the report required under this subsection is due, and shall include the amount of sovereign loans written off or sold by such banks during the preceding year.

"(2) Progress that has been achieved by the appropriate Federal banking agencies and by banking institutions in reducing the risk to the economy of the United States posed by the exposure of banking institutions to troubled international loans through appropriate voluntary or regulatory policies, including increases in capital and reserves of banking institutions.

"(3) The relationship between lending activity by the United States banks and foreign banks in countries experiencing debt service difficulties and exports from the United States and other lending countries to these markets, and the extent to which United States banking institutions can be encouraged to continue to make credit available to finance necessary growth in international trade, and particularly to finance United States exports.

"(4) The response of regulatory agencies in other countries to the international debt problems, including measures which encourage the building of capital and reserves by foreign banking institutions, tax treatment of reserves, encouragement of new lending to promote international trade, and measures which may place United States banking institutions at a competitive disadvantage when compared with foreign banking institutions.

"(5) Steps that have been taken during the previous year by countries experiencing debt service difficulties to enhance conditions for private direct investment (including investment by United States persons) and to eliminate production subsidies, attain price stability, and undertake such other steps as will remove the causes of their debt service difficulties.

Each appropriate Federal banking agency may provide data in the aggregate to the extent necessary to preserve the integrity and confidentiality of the regulatory and examination process.".

SEC. 3122. STUDIES RELATING TO THE REGULATION OF DEPOSITORY INSTITUTIONS.

(a) REGULATORY STUDY REQUIRED.—The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall conduct a study to determine the extent of any regulatory obstacle to negotiated reductions in the debt service obligations associated with foreign debt.

(b) SPECIFIC FACTORS TO BE STUDIED.—The study required by subsection (a) shall include an analysis of regulatory and accounting obstacles to various forms of debt restructuring, including negotiated interest reduction, the amortization of loan losses, securitization and debt conversion techniques, and discounted debt repurchases, as well as an analysis of the profitability of commercial bank lending to developing countries during the 10-year period ending on December 31, 1986. The analysis should include an assessment of the impact of the various forms of debt restructuring on the development of a secondary market in developing country debt and on the safety and soundness of the United States banking system.

(c) REPORT REQUIRED.—Within 6 months after the date of the enactment of this Act, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall transmit to the Congress a report containing the findings and conclusions of such agencies with respect to the study required under subsection (a), together with any recommendations concerning legislation which such agencies determine to be necessary or appropriate to remove regulatory obstacles to negotiated reductions in the debt service obligations associated with sovereign debt.

SEC. 3123. LIMITED PURPOSE SPECIAL DRAWING RIGHTS FOR THE POOREST HEAVILY INDEBTED COUNTRIES.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Secretary of the Treasury, in consultation with the directors and staff of the International Monetary Fund and such other interested parties as the Secretary may determine to be appropriate, shall conduct a study of the feasibility and the efficacy of reducing the international debt of the poorest of the heavily indebted countries through a one-time allocation by the International Monetary Fund of limited purpose Special Drawing Rights to such countries in accordance with a plan which provides that—

(A) the allocation be made without regard to the quota established for any such country under the Articles of Agreement of the Fund;

(B) limited purpose Special Drawing Rights be used only to repay official debt of any such country;

(C) the allocation of limited purpose Special Drawing Rights to any such country not be treated as an allocation on which such country must pay interest to the Fund; and

(D) the use of limited purpose Special Drawing Rights by any such country to repay official debt shall be treated as an allocation of regular Special Drawing Rights to the creditor.

(2) ADDITIONAL FACTORS TO BE STUDIED.—The study required under paragraph (1) shall include the following:

(A) To the extent the creation and allocation of the limited purpose Special Drawing Rights described in paragraph (1) would require an amendment of the Articles of Agreement of the International Monetary Fund, an assessment of the period of time within which such amendment could be ratified by the member nations, based on discussions with the major members of the Fund.

(B) An assessment of other means for achieving the objectives of principal and interest reduction on official debt of the poorest heavily indebted countries through the use of Special Drawing Rights.

(C) A comparative evaluation of proposals of other members of the International Monetary Fund, the directors and staff of the Fund, and other interested parties.

(D) An analysis of the effect the implementation of the provisions in paragraph (1) would have on bilateral and multilateral lenders, the international monetary system, and such other provisions of this Act as may be appropriate.

(E) A comparative analysis of the available alternatives identified under subparagraph (B) or (C).

(b) REPORT REQUIRED.—Within 3 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate containing the findings and conclusions of the Secretary pursuant to the study required under subsection (a), together with—

(1) the recommendation of the Secretary as to which, of all the alternatives for providing relief for the poorest of the heavily indebted countries which were assessed in connection with such study, represents the best available option; and

(2) recommendations for such legislation and administrative action as the Secretary determines to be necessary and appropriate to implement such option.

Subtitle C—Multilateral Development Banks

SEC. 3201. SHORT TITLE.

This subtitle may be cited as the "Multilateral Development Banks Procurement Act of 1988".

SEC. 3202. MULTILATERAL DEVELOPMENT BANK PROCUREMENT.

(a) EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to attach a high priority to promoting opportunities for exports for goods and services from the United States and, in carrying out this function, to investigate thoroughly any complaints from United States bidders about the awarding of procurement contracts by the multilateral development banks to ensure that all contract procedures and rules of the banks are observed and that United States firms are treated fairly.

(b) OFFICER OF PROCUREMENT.—

(1) ESTABLISHMENT.—The Secretary of the Treasury shall designate, within the Office of International Affairs in the Department of the Treasury, an officer of multilateral development bank procurement.

(2) FUNCTION.—The officer shall act as the liaison between the Department of the Treasury, the Department of Commerce, and the United States Executive Directors' offices in the multilateral development banks, in carrying out this section. The officer shall cooperate with the Department of Commerce in efforts to improve opportunities for multilateral development bank procurement by United States companies.

(b) MULTILATERAL DEVELOPMENT BANK DEFINED.—As used in this section, the term "multilateral development bank" includes the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Inter-American Investment Corporation, the Asian Development Bank, the African Development Bank, and the African Development Fund.

Subtitle D—Export-Import Bank and Tied Aid Credit Amendments

SEC. 3301. SHORT TITLE.

This subtitle may be cited as the "Export-Import Bank and Tied Aid Credit Amendments of 1988".

SEC. 3302. PROVISIONS RELATING TO TIED AID CREDIT.

(a) FINDINGS.—The Congress finds that—

(1) negotiations have led to an international agreement to increase the grant element required in tied aid credit offers;

(2) concern continues to exist that countries party to the agreement may continue to offer tied aid credits that deviate from the agreement;

(3) in such cases, the United States could continue to lose export sales in connection with the aggressive, and in some cases, unfair, tied aid practices of such countries; and

(4) in such cases, the Export-Import Bank of the United States should continue to use the Tied Aid Credit Fund established by section 15(c) of the Export-Import Bank Act of 1945 to discourage the use of such predatory financing practices.

(b) EXTENSION OF TIED AID CREDIT FUND.—Subsections (c)(2) and (e)(1) of section 15 of the Export-Import Bank Act of 1945 (12 U.S.C. 635i-3 (c)(2) and (e)(1)) are each amended by striking out "and 1988" and inserting in lieu thereof "1988, and 1989".

(c) REPORT.—

(1) IN GENERAL.—On or before December 31, 1988, the President and Chairman of the Export-Import Bank of the United States, in cooperation with other appropriate government agencies, shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a written report identifying and analyzing the tied aid credit practices of other countries and shall make recommendations for dealing with such practices.

(2) CONSULTATION.—In preparing the report described in paragraph (1), the Export-Import Bank shall consult with appropriate international organizations such as the International Bank for Reconstruction and Development, the International Monetary Fund, and the Development Assistance Committee of the Organization for Economic Cooperation and Development, and with the countries which are party to the Arrangement on Guidelines for Officially Supported Export Credits adopted by the Organization for Economic Cooperation and Development in November 1987.

SEC. 3303. REPORT ON UNITED STATES EXPORTS TO DEVELOPING COUNTRIES.

Within 90 days after the date of the enactment of this Act, the President and Chairman of the Export-Import Bank of the United States shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a written report which contains—

(1) an assessment of the effectiveness of recent program changes in increasing United States exports to developing countries; and

(2) an identification of additional specific policy and program changes which—

(A) would enable the Bank to increase the financing of United States exports to developing countries; and

(B) would encourage greater private sector participation in such financing efforts.

SEC. 3304. AMENDMENTS TO SECTION 2(e) OF THE EXPORT-IMPORT BANK ACT OF 1945.

(a) TIME FOR DETERMINING SUPPLIES.—Section 2(e)(1)(A)(i) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)(1)(A)(i)) is amended by striking out "productive capacity is expected to become operative" and inserting in lieu thereof "commodity will first be sold".

(b) MAKING COMPARATIVE INJURY DETERMINATIONS.—Section 2(e)(2) of such Act (12 U.S.C. 635(e)(2)) is amended—

(1) by inserting "short- and long-term" before "injury to United States producers"; and

(2) by inserting "and employment" before "of the same, similar, or competing commodity".

(c) SUBSTANTIAL INJURY DEFINED FOR EXPORT-IMPORT BANK DETERMINATIONS.—Section 2(e) of such Act (12 U.S.C. 635(e)) is amended by adding at the end the following:

"(3) DEFINITION.—For purposes of paragraph (1)(B), the extension of any credit or guarantee by the Bank will cause substantial injury if the amount of the capacity for production established, or the amount of the increase in such capacity expanded, by such credit or guarantee equals or exceeds 1 percent of United States production.".

Subtitle E—Export Trading Company Act Amendments

SEC. 3401. SHORT TITLE.

This subtitle may be cited as the "Export Trading Company Act Amendments of 1988".

SEC. 3402. EXPORT TRADING COMPANY ACT AMENDMENTS.

(a) STANDARDS FOR DETERMINATION OF EXPORT TRADING COMPANY STATUS.—Section 4(c)(14) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(14)) is amended by inserting after subparagraph (F) the following new subparagraph:

"(G) DETERMINATION OF STATUS AS EXPORT TRADING COMPANY.—

"(i) TIME PERIOD REQUIREMENTS.—For purposes of determining whether an export trading company is operated principally for the purposes described in subparagraph (F)(i)—

"(I) the operations of such company during the 2-year period beginning on the date such company commences operations shall not be taken into account in making any such determination; and

"(II) not less than 4 consecutive years of operations of such company (not including any portion of the period referred to in sub-

clause (I)) shall be taken into account in making any such determination.

"(ii) EXPORT REVENUE REQUIREMENTS.—A company shall not be treated as operated principally for the purposes described in subparagraph (F)(i) unless—

"(I) the revenues of such company from the export, or facilitating the export, of goods or services produced in the United States exceed the revenues of such company from the import, or facilitating the import, into the United States of goods or services produced outside the United States; and

"(II) at least ½ of such company's total revenues are revenues from the export, or facilitating the export, of goods or services produced in the United States by persons not affiliated with such company.".

(b) LEVERAGE.—Section 4(c)(14)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(14)(A)) is amended by redesignating clauses (v) and (vi) as clauses (vi) and (vii), respectively, and by inserting after clause (iv) the following new clause:

"(v) LEVERAGE.—The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.".

(c) INVENTORY.—Section 4(c)(14)(A)) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(14)) is amended by inserting after subparagraph (G) (as added by subsection (a) of this section) the following new subparagraph:

"(H) INVENTORY.—

"(i) NO GENERAL LIMITATION.—The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

"(ii) SPECIFIC LIMITATION BY ORDER.—Notwithstanding clause (i), the Board may issue an order establishing a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.".

Subtitle F—Primary Dealers

SEC. 3501. SHORT TITLE.

This subtitle may be cited as the "Primary Dealers Act of 1988".

SEC. 3502. REQUIREMENT OF NATIONAL TREATMENT IN UNDERWRITING GOVERNMENT DEBT INSTRUMENTS.

(a) FINDINGS.—The Congress finds that—

(1) United States companies can successfully compete in foreign markets if they are given fair access to such markets;

(2) a trade surplus in services could offset the deficit in manufactured goods and help lower the overall trade deficit significantly;

(3) in contrast to the barriers faced by United States firms in Japan, Japanese firms generally have enjoyed access to United States financial markets on the same terms as United States firms; and

(4) United States firms seeking to compete in Japan face or have faced a variety of discriminatory barriers effectively precluding such firms from fairly competing for Japanese business, including—

(A) limitations on membership on the Tokyo Stock Exchange;

(B) high fixed commission rates (ranging as high as 80 percent) which must be paid to members of the exchange by nonmembers for executing trades;

(C) unequal opportunities to participate in and act as lead manager for equity and bond underwritings;

(D) restrictions on access to automated teller machines;

(E) arbitrarily applied employment requirements for opening branch offices;

(F) long delays in processing applications and granting approvals for licenses to operate; and

(G) restrictions on foreign institutions' participation in Ministry of Finance policy advisory councils.

(b) DESIGNATION OF CERTAIN PERSONS AS PRIMARY DEALERS PROHIBITED.—

(1) GENERAL RULE.—Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, any person of a foreign country as a primary dealer in government debt instruments if such foreign country does not accord to United States companies the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country as such country accords to domestic companies of such country.

(2) CERTAIN PRIOR ACQUISITIONS EXCEPTED.—Paragraph (1) shall not apply to the continuation of the prior designation of a company as a primary dealer in government debt instruments if—

(A) such designation occurred before July 31, 1987; and

(B) before July 31, 1987—

(i) control of such company was acquired from a person (other than a person of a foreign country) by a person of a foreign country; or

(ii) in conjunction with a person of a foreign country, such company informed the Federal Reserve Bank of New York of the intention of such person to acquire control of such company.

(c) EXCEPTION FOR COUNTRIES HAVING OR NEGOTIATING BILATERAL AGREEMENTS WITH THE UNITED STATES.—Subsection (b) shall not apply to any person of a foreign country if—

(1) that country, as of January 1, 1987, was negotiating a bilateral agreement with the United States under the authority of section 102(b)(4)(A) of the Trade Act of 1974 (19 U.S.C. 2112(b)(4)(A)); or

(2) that country has a bilateral free trade area agreement with the United States which entered into force before January 1, 1987.

(d) PERSON OF A FOREIGN COUNTRY DEFINED.—For purposes of this section, a person is a "person of a foreign country" if that person, or any other person which directly or indirectly owns or controls that person, is a resident of that country, is organized under the laws of that country, or has its principal place of business in that country.

(e) EFFECTIVE DATE.—This section shall take effect 12 months after the date of the enactment of this Act.

Subtitle G—Financial Reports

SEC. 3601. SHORT TITLE.

This subtitle may be cited as the "Financial Reports Act of 1988".

SEC. 3602. QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.

Not less frequently than every 4 years, beginning December 1, 1990, the Secretary of the Treasury, in conjunction with the Secretary of State, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, shall report to the Congress on (1) the foreign countries from which foreign financial services institutions have entered into the business of providing financial services in the United States, (2) the kinds of financial services which are being offered, (3) the extent to which foreign countries deny national treatment to United States banking organizations and securities companies, and (4) the efforts undertaken by the United States to eliminate such discrimination. The report shall focus on those countries in which there are significant denials of national treatment which impact United States financial firms. The report shall also describe the progress of discussions pursuant to section 3603.

SEC. 3603. FAIR TRADE IN FINANCIAL SERVICES.

(a) DISCUSSIONS.—When advantageous the President or his designee shall conduct discussions with the governments of countries that are major financial centers, aimed at:

(1) ensuring that United States banking organizations and securities companies have access to foreign markets and receive national treatment in those markets;

(2) reducing or eliminating barriers to, and other distortions of, international trade in financial services;

(3) achieving reasonable comparability in the types of financial services permissible for financial service companies; and

(4) developing uniform supervisory standards for banking organizations and securities companies, including uniform capital standards.

(b) CONSULTATION BEFORE DISCUSSIONS.—Before entering into those discussions, the President or his designee shall consult with the committees of jurisdiction in the Senate and the House of Representatives.

(c) RECOMMENDATIONS.—After completing those discussions and after consultation with the committees of jurisdiction, the President shall transmit to the Congress any recommendations that have emerged from those discussions. Any recommendations for changes in United States financial laws or practices shall be accompanied by a description of the changes in foreign financial laws or practices that would accompany action by the Congress, and by an explanation of the benefits that would accrue to the United States from adoption of the recommendations.

(d) CONSTRUCTION OF SECTION.—Nothing in this section may be construed as prior approval of any legislation which may be necessary to implement any recommendations resulting from discussions under this section.

SEC. 3604. BANKS LOAN LOSS RESERVES.

The Federal Reserve Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report on the issues raised by including loan loss reserves as part of banks' primary capital for regulatory purposes by March 31, 1989. Such report shall include a review of the treatment of loan loss reserves and the composition of primary capital of banks in other major industrialized countries, and shall include an analysis as to whether loan loss reserves should continue to be counted as primary capital for regulatory purposes.

TITLE IV—AGRICULTURAL TRADE

SEC. 4001. SHORT TITLE.

This title may be cited as the "Agricultural Competitiveness and Trade Act of 1988".

Subtitle A—Findings, Policy, and Purpose

SEC. 4101. FINDINGS.

Congress finds that—

(1) United States agricultural exports have declined by more than 36 percent since 1981, from $43,800,000,000 in 1981 to $27,900,000,000 in 1987;

(2) the United States share of the world market for agricultural commodities and products has dropped by 20 percent during the last 6 years;

(3) for the first time in 15 years, the United States incurred monthly agricultural trade deficits in 1986;

(4) the loss of $1,000,000,000 in United States agricultural exports causes the loss of 35,000 agricultural jobs and the loss of 60,000 nonagricultural jobs;

(5) the loss of agricultural exports threatens family farms and the economic well-being of rural communities in the United States;

(6) factors contributing to the loss of United States agricultural exports include changes in world agricultural markets such as—

(A) the addition of new exporting nations;

(B) innovations in agricultural technology;

(C) increased use of export subsidies designed to lower the price of commodities on the world market;

(D) the existence of barriers to agricultural trade;

(E) the slowdown in the growth of world food demand in the 1980's due to cyclical economic factors, including currency fluctuations and a debt-related slowdown in the economic growth of agricultural markets in certain developing countries; and

(F) the rapid buildup of surplus stocks as a consequence of favorable weather for agricultural production during the 1980's;

(7) increasing the volume and value of exports is important to the financial well-being of the farm sector in the United States and to increasing farm income in the United States;

(8) in order to increase agricultural exports and improve prices for farmers and ranchers in the United States, it is necessary that all agricultural export programs of the United States be used in an expeditious manner, including programs established under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), and section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);

(9) greater use should be made by the Secretary of Agriculture of the authorities established under the section 4 of the Food for Peace Act of 1966 (7 U.S.C. 1707a), the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), and the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.) to provide intermediate credit financing and other assistance for the establishment of facilities in importing countries to—

(A) improve the handling, marketing, processing, storage, and distribution of imported agricultural commodities and products; and

(B) increase livestock production to enhance the demand for United States feed grains;

(10) food aid and export assistance programs in developing countries stimulate economic activity which causes incomes to rise, and, as incomes rise, diets improve and the demand for and ability to purchase food increases;

(11) private voluntary organizations and cooperatives are important and successful partners in our food aid and development programs; and

(12) in addition to meeting humanitarian needs, food aid used in sales and barter programs by private voluntary organizations and cooperatives—

(A) provides communities with health care, credit systems, and tools for development; and

(B) establishes the infrastructure that is essential to the expansion of markets for United States agricultural commodities and products.

SEC. 4102. POLICY.

It is the policy of the United States—

(1) to provide, through all possible means, agricultural commodities and products for export at competitive prices, with full assurance of quality and reliability of supply;

(2) to support the principle of free trade and the promotion of fair trade in agricultural commodities and products;

(3) to support fully the negotiating objectives set forth in section 1101(b) of this Act to eliminate or reduce substantially constraints on fair and open trade in agricultural commodities and products;

(4) to use statutory authority to counter unfair foreign trade practices and to use all available means, including export promotion programs, and, if necessary, restrictions on United States imports of agricultural commodities and products, in order to encourage fair and open trade; and

(5) to provide for increased representation of United States agricultural trade interests in the formulation of national fiscal and monetary policy affecting trade.

SEC. 4103. PURPOSE.

It is the purpose of this title—

(1) to increase the effectiveness of the Department of Agriculture in agricultural trade policy formulation and implementation and in assisting United States agricultural producers to participate in international agricultural trade, by strengthening the operations of the Department of Agriculture; and

(2) to improve the competitiveness of United States agricultural commodities and products in the world market.

Subtitle B—Agricultural Trade Initiatives

PART 1—GENERAL PROVISIONS

SEC. 4201. LONG-TERM AGRICULTURAL TRADE STRATEGY REPORTS.

(a) CONTENTS.—The Secretary of Agriculture shall prepare annually, and the President shall submit together with the budget for each fiscal year, a Long-Term Agricultural Trade Strategy Report establishing recommended policy goals for United States agricultural trade and exports, and recommended levels of spending on international activities of the Department of Agriculture, for 1-, 5-, and 10-fiscal year periods. In preparing each such report, the Secretary shall consult with the United States Trade Representative to ensure that the report is coordinated with the annual national trade policy agenda included in the annual report for the relevant fiscal year prepared under section 163 of the Trade Act of 1974 (19 U.S.C. 2213). Each such report shall include—

(1) findings with respect to trends in the comparative position of the United States and other countries in the export of agricultural commodities and products, organized by major commodity group and including a comparative analysis of the cost of production of such commodities and products;

(2) findings with respect to new developments in research conducted by other countries that may affect the competitiveness of United States agricultural commodities and products;

(3) findings and recommendations with respect to the movement of United States agricultural commodities and products in nonmarket economies;

(4) as appropriate, the agricultural trade goals for each agricultural commodity and value-added product produced in the United States for the period involved, expressed in both physical volume and monetary value;

(5) recommended Federal policy and programs to meet such agricultural trade goals;

(6) recommended levels of Federal spending on international programs and activities of the Department of Agriculture to meet such agricultural trade goals;

(7) recommended levels of Federal spending on programs and activities of agencies other than the Department of Agriculture to meet such agricultural trade goals; and

(8) recommended long-term strategies for growth in agricultural trade and exports—

(A) taking into account United States competitiveness, trade negotiations, and international monetary and exchange rate policies; and

(B) including specific recommendations with respect to export enhancement programs (including credit programs and export payment-in-kind programs), market development activities, and foreign agricultural and economic development assistance activities needed to implement such strategies.

(b) TREATMENT AS ANNUAL BUDGET SUBMISSION.—Provisions of each Long-Term Agricultural Trade Strategy Report that relate to recommended levels of spending on international activities of the Department of Agriculture for the upcoming fiscal year shall be treated as the President's annual budget submission to Congress for such activities for such fiscal year, and shall be submitted along with the budget request for other programs of the Department of Agriculture for such fiscal year.

(c) SUCCEEDING REPORTS.—The Secretary of Agriculture, in each annual Long-Term Agricultural Trade Strategy Report, shall identify any recommendations in such report that might modify the long-term policy contained in any previous report.

(d) RECOMMENDATIONS FOR CHANGES IN LAW.—The President shall include in each annual budget submission recommendations for such changes in law as are required to meet the long-term goals established in the Report.

SEC. 4202. TECHNICAL ASSISTANCE IN TRADE NEGOTIATIONS.

The Secretary of Agriculture shall provide technical services to the United States Trade Representative on matters pertaining to agricultural trade and with respect to international negotiations on issues related to agricultural trade.

SEC. 4203. JOINT DEVELOPMENT ASSISTANCE AGREEMENTS WITH CERTAIN TRADING PARTNERS.

(a) DEVELOPMENT OF PLAN.—With respect to any country that has a substantial positive trade balance with the United States, the Secretary of Agriculture, in consultation with the Secretary of State and (through the

Secretary of State) representatives of such country, may develop an appropriate plan under which that country would purchase United States agricultural commodities or products for use in development activities in developing countries. In developing such plan, the Secretary of Agriculture shall take into consideration the agricultural economy of such country, the nature and extent of such country's programs to assist developing countries, and other relevant factors. The Secretary of Agriculture shall submit each such plan to the President as soon as practicable.

(b) AGREEMENT.—The President may enter into an agreement with any country that has a positive trade balance with the United States under which that country would purchase United States agricultural commodities or products for use in agreed-on development activities in developing countries.

SEC. 4204. REORGANIZATION EVALUATION.

The Secretary of Agriculture shall evaluate the reorganization proposal recommended by the National Commission on Agricultural Trade and Export Policy and other proposals to improve management of international trade activities of the Department of Agriculture. To assist the Secretary in the evaluation, the Secretary shall appoint a private sector advisory committee of not less than 4 members, who shall be appointed from among individuals representing farm and commodity organizations, market development cooperators, and agribusiness. Not later than April 30, 1989, the Secretary shall report the findings of the evaluation to Congress, together with the views and recommendations of the private sector advisory committee.

SEC. 4205. CONTRACTING AUTHORITY TO EXPAND AGRICULTURAL EXPORT MARKETS.

(a) IN GENERAL.—The Secretary of Agriculture may contract with individuals for services to be performed outside the United States as the Secretary determines necessary or appropriate for carrying out programs and activities to maintain, develop, or enhance export markets for United States agricultural commodities and products.

(b) NOT EMPLOYEES OF THE UNITED STATES.—Such individuals shall not be regarded as officers or employees of the United States.

SEC. 4206. ESTABLISHMENT OF TRADE ASSISTANCE OFFICE.

(a) ESTABLISHMENT WITHIN THE FOREIGN AGRICULTURAL SERVICE.—The Secretary of Agriculture shall establish an office within the Foreign Agricultural Service to carry out the duties described in subsections (b) and (c) under the direction of the Administrator of the Foreign Agricultural Service.

(b) PRIMARY RESPONSIBILITY.—The office established under subsection (a) shall provide trade assistance and information to persons who are interested in exporting United States agricultural commodities and products or who believe they have been injured by unfair trade practices with respect to trade in agricultural commodities and products.

(c) DUTIES.—The office established under subsection (a) shall—

(1) compile and make readily available international trade information, including information concerning trade practices carried out by other countries to promote the export of agricultural commodities and products, trade barriers imposed by other countries, unfair trade practices of other countries, and remedies under United States law that might be available to persons injured by unfair trade practices; and

(2) provide information and assistance to persons interested in participating in programs carried out by the Foreign Agricultural Service, the Commodity Credit Corporation, and other agencies with respect to the international marketing and export of domestically produced agricultural commodities and products or who believe they have been injured by unfair trade practices of other countries with respect to trade in agricultural commodities and products.

(d) REPORT.—

(1) DEADLINE FOR SUBMISSION.—Not later than 60 days after the end of each fiscal year, the Administrator of the Foreign Agricultural Service shall submit a report described in paragraphs (2) and (3) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) CONTENTS OF EACH REPORT.—Each such report shall describe—

(A) the type of information that is currently available through the office established by this section; and

(B) the type of assistance provided to persons during the previous fiscal year.

(3) ADDITIONAL CONTENTS FOR FIRST REPORT.—In the first report submitted under this section, the Administrator shall also—

(A) provide an analysis of the information currently available concerning foreign agricultural trade practices and domestic agricultural trade promotion programs and the methods used to disseminate such information;

(B) provide recommendations with respect to additional information and assistance that should be made available to interested persons; and

(C) provide an analysis of the degree that overlapping information and reports concerning agricultural trade are prepared.

PART 2—FOREIGN AGRICULTURAL SERVICE

SEC. 4211. PERSONNEL OF THE SERVICE.

(a) INCREASED LEVEL.—To ensure that the agricultural export programs of the United States are carried out in an effective manner, the authorized number of personnel for the Foreign Agricultural Service of the Department of Agriculture (hereinafter in this part referred to as the "Service") shall not be less than 900 full-time employees during each of the fiscal years 1989 and 1990.

(b) RANK OF FOREIGN AGRICULTURAL SERVICE OFFICERS IN FOREIGN MISSIONS.—Notwithstanding any other provision of law, the Secretary of State shall, upon the request of the Secretary of Agriculture, accord the diplomatic title of Minister-Counselor to the senior Service officer assigned to any United States mission abroad. The number of Service officers holding such diplomatic title at any time may not exceed eight.

SEC. 4212. AGRICULTURAL ATTACHE EDUCATIONAL PROGRAM.

The Administrator of the Service (hereinafter in this part referred to as the "Administrator") shall establish a program within the Service that directs attaches of the Service who are reassigned from abroad to the United States, and other personnel of the Service, to visit and consult with producers and exporters of agricultural commodities and products and State officials throughout the United States concerning various methods to increase exports of United States agricultural commodities and products.

SEC. 4213. PERSONNEL RESOURCE TIME.

(a) IN GENERAL.—In planning the overall allocation of personnel resource time of agricultural attaches of the Service, the Administrator shall ensure that the maximum quantity practicable of the overall personnel resource time of agricultural attaches of the Service be devoted to activities designed to increase markets for United States agricultural commodities and products.

(b) REPORTS.—The Administrator shall submit reports to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that describe the allocation of personnel resource time of agricultural attaches during the 1988 and 1989 fiscal years. The report for fiscal year 1988 shall be submitted not later than September 30, 1988, or 30 days after the date of the enactment of this Act, whichever is later. The report for fiscal year 1989 shall be submitted not later than September 30, 1989.

SEC. 4214. COOPERATOR ORGANIZATIONS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the foreign market development cooperator program of the Service, and the activities of individual foreign market cooperator organizations, have been among the most successful and cost-effective means to expand United States agricultural exports. Congress affirms its support for the program and the activities of the cooperator organizations. The Administrator and the private sector should work together to ensure that the program, and the activities of cooperator organizations, are expanded in the future.

(b) COMMODITIES FOR COOPERATOR ORGANIZATIONS.—The Secretary of Agriculture may make available to cooperator organizations agricultural commodities owned by the Commodity Credit Corporation, for use by such cooperators in projects designed to expand markets for United States agricultural commodities and products.

(c) RELATION TO FUNDS.—Commodities made available to cooperator organizations under this section shall be in addition to, and not in lieu of, funds appropriated for market development activities of such cooperator organizations.

(d) CONFLICTS OF INTEREST.—The Secretary shall take appropriate action to prevent conflicts of interest among cooperator organizations participating in the cooperator program.

(e) EVALUATION.—It is the sense of Congress that the Secretary should establish a consistent, objective means for the evaluation of cooperator programs.

SEC. 4215. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.

There are authorized to be appropriated for the Service, in addition to any sums otherwise authorized to be appropriated by any provision of law other than this section, $20,000,000 for each of the fiscal years 1988, 1989, and 1990 for market development activities, including—

(1) expansion of the agricultural attache service;

(2) expansion of international trade policy activities of the Service;

(3) enhancement of the Service worldwide market information system;

(4) increasing the number of trade shows and exhibitions conducted by the Service and upgrading the quality of United States representation at trade shows and exhibitions; and

(5) developing markets for value-added beef, pork, and poultry products.

Subtitle C—Existing Agricultural Trade Programs

SEC. 4301. TRIGGERED MARKETING LOANS AND EXPORT ENHANCEMENT.

(a) CERTIFICATION TO CONGRESS.—Notwithstanding any other provision of law, if, before January 1, 1990, a law has not been enacted in accordance with section 151 of the Trade Act of 1974 (19 U.S.C. 2191) that implements an agreement negotiated under the Uruguay round of multilateral trade negotiations conducted under the General Agreement on Tariffs and Trade (hereinafter in this section referred to as "GATT negotiations") concerning agricultural trade, the President, not later than 45 days after such date—

(1) shall submit a report to the Committee on Agriculture, the Committee on Foreign Affairs, and the Committee on Ways and Means of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate describing the status of the GATT negotiations concerning agricultural trade, the progress that has been made to date in the negotiations, the general areas of disagreement, the anticipated date of completion of the negotiations, and the changes in domestic farm programs that are likely to be necessary on conclusion of the negotiations; and

(2) shall certify to Congress whether or not significant progress has been made in the negotiations.

(b) MARKETING LOAN.—

(1) IMPLEMENTATION.—Except as provided in paragraph (2), if the President does not certify that significant progress has been made towards reaching a GATT agreement concerning agricultural trade, the President shall, not later than 60 days before the beginning of the marketing year for the 1990 crop of wheat, instruct the Secretary of Agriculture to permit producers to repay loans made under sections 107D(a), 105C(a), and 201(i) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(a), 1444e(a), and 1446(i)) for each of the 1990 crops of wheat, feed grains, and soybeans at a level that is the lesser of—

(A) the loan level determined for each such crop; or

(B) the prevailing world market price for each such crop, as determined by the Secretary.

(2) WAIVER.—The President may waive the application of paragraph (1) by certifying to Congress that implementation of the marketing loan would harm further negotiations.

(3) DISCONTINUANCE.—If, after the implementation of a marketing loan in accordance with paragraph (1), the President certifies to Congress that substantial progress is being made in the GATT negotiations and that continuation of the marketing loan program implemented in accordance with paragraph (1) would harm such progress, the President may instruct the Secretary of Agriculture to discontinue the marketing loan program.

(c) EXPORT ENHANCEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (4), if the President exercises the authority to waive or discontinue the marketing loan program provided for in paragraph (2) or (3) of subsection (b), the President shall instruct the Secretary of Agriculture to make agricultural commodities and products acquired by the Commodity Credit Corporation equaling at least $2,000,000,000 in value available during the 1990 through 1992 fiscal years to United States exporters of domestically produced agricultural commodities and products for the purpose of making exports of such commodities and products available on the world market at competitive prices.

(2) NONDISPLACEMENT.—Commodities and products made available in accordance with this subsection shall be in addition to, and not in lieu of, other commodities and products made available for the purpose of enhancing the export of United States commodities and products.

(3) USE OF COMMODITY CREDIT CORPORATION.—The Secretary of Agriculture may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this subsection.

(4) EXCEPTION.—The President may waive the application of paragraph (1) by certifying to Congress that implementation of the export enhancement program provided for by this subsection would be a substantial impediment to achieving a successful agreement under the GATT.

(5) DISCONTINUANCE.—If, after the implementation of paragraph (1), the President certifies to Congress that substantial progress is being made in the GATT negotiations and that continuation of the export enhancement program implemented in accordance with paragraph (1) would harm such progress, the President may, not before 60 days after the consultation required under subsection (d) with respect to such certification, instruct the Secretary of Agriculture to suspend the implementation of such program.

(d) CONSULTATION.—The President may not make a certification to Congress under this section unless the United States Trade Representative—

(1) consults about the certification with—

(A) the Committee on Agriculture, the Committee on Foreign Affairs, and the Committee on Ways and Means of the House of Representatives; and

(B) the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate; and

(2) reports to the President the results of such consultation.

SEC. 4302. PRICE SUPPORT PROGRAMS FOR SUNFLOWER SEEDS AND COTTONSEED.

(a) SUNFLOWER SEEDS.—If producers are permitted to repay loans for the 1990 crop of soybeans under section 201(i) of the Agricultural Act of 1949 (7 U.S.C. 1446(i)) at a level that is less than the full amount of the loan pursuant to section 4301 of this Act, the Secretary shall support the price of sunflower seeds through loans and purchases for the 1990 crop of sunflowers in accordance with section 201(l) of the Agricultural Act of 1949.

(b) COTTONSEED.—If a producer is permitted to repay a loan for the 1990 crop of soybeans under section 201(i) of the Agricultural Act of 1949 (7 U.S.C. 1446(i)) at a level that is less than the full amount of the loan pursuant to section 4301 of this Act, the Secretary shall support the price of the 1990 crop of cottonseed at such level as the Secretary determines will cause cottonseed to compete on equal terms with soybeans on the market. The Secretary shall carry out this subsection using the funds, facilities, and authorities of the Commodity Credit Corporation.

(c) DISCONTINUANCE.—If the marketing loan program for the 1990 crop of soybeans is discontinued under section 4301(b)(3) of this Act, the Secretary shall discontinue the price support programs for sunflower seeds and cottonseed required by this section.

SEC. 4303. MULTIYEAR AGREEMENTS UNDER THE FOOD FOR PROGRESS PROGRAM.

Section 1110 of the Food Security Act of 1985 (7 U.S.C. 1736o) is amended—

(1) by redesignating subsection (k) as subsection (l); and

(2) by inserting after subsection (j) the following:

"(k) In carrying out this section, the President shall, on request and subject to the availability of commodities, approve agreements that provide for commodities to be made available for distribution or sale by recipient countries on a multiyear basis if the agreements otherwise meet the requirements of this section.".

SEC. 4304. TARGETED EXPORT ASSISTANCE.

(a) LEVEL OF PROGRAM.—Section 1124(a) of the Food Security Act of 1985 (7 U.S.C. 1736s(a)) is amended—

(1) in paragraph (1)—

(A) by striking out "1988" and inserting in lieu thereof "1987"; and

(B) by striking out "and" at the end; and

(2) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) for the fiscal year 1988, the Secretary shall use under this section not less than $215,000,000 of the funds of, or commodities owned by, the Corporation, except that the Secretary shall use funds or commodities of the Corporation in excess of $110,000,000 only to the extent appropriations to reimburse the Corporation for such additional expenditures of funds or distribution of commodities are made available in advance to carry out this section; and

"(3) for each of the fiscal years 1989 and 1990, the Secretary shall use under this section not less than $325,000,000 of the funds of, or commodities owned by, the Corporation.".

(b) COUNTERVAILING DUTY ACTION.—Section 1124(b) of such Act is amended—

(1) in paragraph (1), by striking out "Funds" and inserting in lieu thereof "Except as provided in paragraph (3), funds"; and

(2) by adding at the end thereof the following new paragraph:

"(3)(A) Funds or commodities made available for use under this section may be used by the Secretary to assist organizations consisting of producers or processors of United States agricultural commodities in amounts necessary to compensate the organizations for reasonable expenses incurred in defending countervailing duty actions instituted after January 1, 1986, in foreign countries to offset the benefits of the agricultural programs provided for under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.). In no event may such assistance exceed $500,000 for the defense of any one countervailing duty action.

"(B) If the Secretary declines to make funds or commodities available under this paragraph, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the reasons for declining to make the funds or commodities available.".

SEC. 4305. EXPORT CREDIT GUARANTEE PROGRAM.

It is the sense of Congress that, to the extent that the Commodity Credit Corporation makes a specified allocation of credit guarantees available under the export credit guarantee program referred to in section 1125 of the Food Security Act of 1985 (7 U.S.C. 1736t) for short-term credit extended to finance the export sales of United States agricultural commodities and products, such allocation should be made on a country-only basis and not on a commodity basis or a commodity and country basis.

SEC. 4306. AGRICULTURAL EXPORT ENHANCEMENT PROGRAM.

(a) PRIORITIES.—Section 1127(b) of the Food Security Act of 1985 (7 U.S.C. 1736v(b)) is amended by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) may consider for participation all interested United States exporters, processors, and users and interested foreign purchasers, and may give priority to sales to countries that have traditionally purchased United States agricultural commodities and products;".

(b) LEVEL OF FUNDING.—Section 1127(i) of such Act is amended—

(1) by striking out "1988" and inserting in lieu thereof "1990"; and

(2) by striking out "$1,500,000,000" and inserting in lieu thereof "$2,500,000,000".

SEC. 4307. AGRICULTURAL ATTACHE REPORTS.

Subsection (b) of section 1132 of the Food Security Act of 1985 (7 U.S.C. 1736x(b)) is amended to read as follows:

"(b) The Secretary shall—

"(1) annually compile the information contained in such reports;

"(2) in consultation with the agricultural technical advisory committees established under section 135(c) of the Trade Act of 1974 (19 U.S.C. 2155(c)), include in the compilation a priority ranking of those trade barriers identified in subsection (a) by commodity group;

"(3) include in the compilation a list of actions undertaken to reduce or eliminate such trade barriers; and

"(4) make the compilation available to Congress, the trade assistance office created under section 4602 of the Agricultural Competitiveness and Trade Act of 1988, the agricultural policy advisory committee, and other interested parties.".

SEC. 4308. DAIRY EXPORT INCENTIVE PROGRAM.

Paragraphs (2) through (3) of section 153(d) of the Food Security Act of 1985 (15 U.S.C. 713a-14(d)) are amended to read as follows:

"(2) If payments in commodities are authorized, such payments shall be made through the issuance of generic certificates redeemable in commodities.

"(3) If generic certificates issued in accordance with the program provided for by this section are exchanged for dairy products owned by the Commodity Credit Corporation, the regulations issued by the Secretary shall ensure that—

"(A) such dairy products, or an equal quantity of other dairy products, will be sold for export by the entity; and

"(B) any such export sales by the entity—

"(i) will be in addition to, and not in place of, export sales of dairy products that the entity would otherwise make under the program or in the absence of the program; and

"(ii) to the extent practicable, will not displace commercial export sales of United States dairy products by other exporters.".

SEC. 4309. BARTER OF AGRICULTURAL COMMODITIES.

In recognition of the importance of barter programs in expanding agricultural trade, it is the sense of Congress that the Secretary of Agriculture should expedite the implementation of section 416(d) of the Agricultural Act of 1949 (7 U.S.C. 1431(d)) and section 1167 of the Food Security Act of 1985 (7 U.S.C. 1727g note and 1736aa), relating to the barter of agricultural commodities.

SEC. 4310. MINIMUM LEVEL OF FOOD ASSISTANCE.

(a) ANNUAL MINIMUM.—It is the sense of Congress that—

(1) the United States should maintain its historic proportion of food assistance constituting one-third of all United States foreign economic assistance; and

(2) accordingly, the total amount of food assistance made available to foreign countries under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) and section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)) should not be less than one-third of the total amount of foreign economic assistance provided for each fiscal year.

(b) DEFINITION.—For purposes of this section, the term "foreign economic assistance" includes—

(1) assistance under chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), or any other law authorizing economic assistance for foreign countries; and

(2) United States contributions to the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, or any other multilateral development bank.

SEC. 4311. FOOD AID AND MARKET DEVELOPMENT.

(a) POLICY STATEMENT.—It is the policy of the United States to use food aid and agriculturally-related foreign economic assistance programs more effectively to develop markets for United States agricultural commodities and products.

(b) REQUIREMENT.—The President (or, as appropriate, the Secretary of Agriculture) shall encourage recipient countries under food assistance agreements entered into under any program administered by the Secretary to agree to give preference to United States food and food products in future food purchases.

Subtitle D—Wood and Wood Products

SEC. 4401. DEVELOPING MARKETS FOR WOOD AND WOOD PRODUCTS UNDER PUBLIC LAW 480.

Section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1704(b)(1)) is amended by inserting "(including wood and processed wood products of the United States)" after "agricultural commodities" the first place it appears.

SEC. 4402. DEVELOPING MARKETS FOR WOOD AND WOOD PRODUCTS UNDER THE SHORT-TERM AND INTERMEDIATE-TERM EXPORT CREDIT GUARANTEE PROGRAMS.

(a) SHORT-TERM EXPORT CREDIT GUARANTEES.—Section 1125 of the Food Security Act of 1985 (7 U.S.C. 1736t) is amended—

(1) in subsection (b), by inserting ", including wood and processed wood products" after "agricultural commodities and the products thereof"; and

(2) by adding at the end thereof the following:

"(d) For the purpose of this section, the term 'wood and processed wood products' includes but is not limited to logs, lumber (boards, timber, millwork, molding, flooring, and siding), veneer, panel products (plywood, particle board, and fiberboard), utility and telephone poles, other poles and posts, railroad ties, wood pulp, and wood chips.".

(b) INTERMEDIATE-TERM EXPORT CREDIT.—Section 4(b)(1) of the Food for Peace Act of 1966 (7 U.S.C. 1707a(b)(1)) is amended by adding at the end thereof the following: "For the purpose of this paragraph, the term 'agricultural commodities' includes wood and processed wood products, as defined in section 1125(d) of the Food Security Act of 1985 (7 U.S.C. 1736t(d)).".

SEC. 4403. COOPERATIVE NATIONAL FOREST PRODUCTS MARKETING PROGRAM.

The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 et seq.) is amended by adding at the end thereof the following:

"SEC. 15. COOPERATIVE NATIONAL FOREST PRODUCTS MARKETING PROGRAM.

"(a) FINDINGS AND PURPOSES.—

"(1) FINDINGS.—Congress finds that—

"(A) the health and vitality of the domestic forest products industry is important to the well-being of the economy of the United States;

"(B) the domestic forest products industry has a significant potential for expansion in both domestic and foreign markets;

"(C) many small-sized to medium-sized forest products firms lack the tools that would enable them to meet the increasing challenge of foreign competition in domestic and foreign markets; and

"(D) a new cooperative forest products marketing program will improve the competitiveness of the United States forest products industry.

"(2) PURPOSES.—The purposes of this section are to—

"(A) provide direct technical assistance to the United States forest products industry to improve marketing activities;

"(B) provide cost-share grants to States to support State and regional forest products marketing programs; and

"(C) target assistance to small-sized and medium-sized producers of solid wood and processed wood products, including pulp.

"(b) PROGRAM AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall establish a cooperative national forest products marketing program under this Act that provides—

"(A) technical assistance to States, landowners, and small-sized to medium-sized forest products firms on ways to improve domestic and foreign markets for forest products; and

"(B) grants of financial assistance with matching requirements to the States to assist in State and regional forest products marketing efforts targeted to aid small-sized to medium-sized forest products firms and private, nonindustrial forest landowners.

"(2) INTERSTATE COOPERATIVE AGREEMENTS.—Grant agreements shall encourage the establishment of interstate cooperative agreements by the States for the purpose of promoting the development of domestic and foreign markets for forest products.

"(c) LIMITATIONS.—

"(1) COOPERATION WITH OTHER FEDERAL AGENCIES.—In carrying out this section, the Secretary shall cooperate with Federal departments and agencies to avoid the duplication of efforts and to increase program efficiency.

"(2) DOMESTIC PROGRAM.—The program authorized under this section shall be carried out within the United States and not be extended to Department of Agriculture activities in foreign countries.

"(d) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1991, to carry out this section.

"(e) PROGRAM REPORT.—The Secretary shall report to Congress annually on the activities taken under the marketing program established under this section. A final report including recommendations for program changes and the need and desirability of the reauthorization of this authority, and re-

quired levels of funding, shall be submitted to Congress not later than September 30, 1990.".

SEC. 4404. USE OF DEPARTMENT OF AGRICULTURE PROGRAMS.

The Secretary of Agriculture shall actively use Department of Agriculture concessional programs and export credit guarantee programs to promote the export of wood and processed wood products.

Subtitle E—Studies and Reports

SEC. 4501. STUDY OF CANADIAN WHEAT IMPORT LICENSING REQUIREMENTS.

(a) FINDINGS.—Congress finds that—

(1) Canadian importers of wheat or products containing a minimum of 25 percent wheat (except packaged wheat products for retail sale) from the United States must obtain import licenses from the Canadian Wheat Board;

(2) the Canadian Wheat Board requires such importers of United States wheat and wheat products to prove that the wheat or wheat products to be imported are not readily available in Canada before issuance of an import license, and therefore, for all practical purposes, such licenses are not granted by the Canadian Wheat Board;

(3) the licensing requirements of the Canadian Wheat Board's import licensing program result in a trade barrier on the importation of United States wheat and wheat products; and

(4) Canada is a member of the General Agreement on Tariffs and Trade and, under such agreement, member countries should, in general, eliminate import licensing programs that operate as nontariff trade barriers.

(b) STUDY.—The Secretary of Agriculture shall conduct a study of the Canadian Wheat Board's import licensing program to—

(1) assess the effect of the Canadian Wheat Board's import licensing program referred to in subsection (a) on wheat producers, processors, and exporters in the United States; and

(2) determine—

(A) the nature and extent of the licensing requirements of the Canadian Wheat Board's import licensing program; and

(B) the estimated effect of the Canadian Wheat Board's import licensing program in reducing exports of United States wheat and wheat products to Canada.

(c) SUBMISSION OF RESULTS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit the results of the study conducted under subsection (b) to the United States Trade Representative.

(d) CONSULTATION WITH CONGRESS.—Not later than 90 days after the results of the study are submitted, the Secretary and the United States Trade Representative shall consult with the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate on the status of efforts to negotiate the elimination of such Canadian licensing requirements.

SEC. 4502. IMPORT INVENTORY.

(a) COMPILATION AND REPORT ON IMPORTS.—The Secretary of Agriculture, in consultation with the Secretary of Commerce, the International Trade Commission, the United States Trade Representative, and the heads of all other appropriate Federal agencies, shall compile and report to the public statistics on the total value and quantity of imported raw and processed agricultural products. The report shall be limited to those statistics that such agencies already obtain for other purposes.

(b) COMPILATION AND REPORT ON CONSUMPTION.—The Secretary shall compile and report to the public data on the total quantity of production and consumption of domestically produced raw and processed agricultural products.

(c) ISSUING OF DATA.—The reports required by this section shall be made in a format that correlates statistics for the quantity and value of imported agricultural products to the production and consumption of domestic agricultural products. The Secretary shall issue such reports on an annual basis, with the first report required not later than 1 year after the date of enactment of this Act.

SEC. 4503. STUDY RELATING TO HONEY.

(a) STUDY.—The Secretary of Agriculture shall conduct a study to determine the effect of imported honey on United States honey producers, the availability of honey bee pollination within the United States, and whether there is reason to believe imports of honey tend to interfere with or render ineffective the honey price support program of the Department of Agriculture.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall report the results of such study to the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate.

SEC. 4504. STUDY OF DAIRY IMPORT QUOTAS.

(a) STUDY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall conduct a study to determine whether, and to what extent, the price support program for milk established under section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) would be affected by a reduction in, or elimination of, limitations imposed on the importation of certain dairy products under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, as a result of multilateral trade negotiations, including negotiations under the General Agreement on Tariffs and Trade. In conducting this study, the Secretary shall assess the likelihood of other nations' agreeing to reduce or eliminate their domestic dairy price stabilization, export subsidization, or import control programs in such multilateral negotiations.

(b) REPORT.—The Secretary shall submit a report describing the results of the study, together with any recommendations, to the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate.

SEC. 4505. REPORT ON INTERMEDIATE EXPORT CREDIT.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture shall submit a report to the Committee on Agriculture and the Committee on Foreign Affairs of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on the use of authorities established under section 4 of the Food for Peace Act of 1966 (7 U.S.C. 1707a), the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), and the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), to provide intermediate credit financing and other trade assistance for the establishment of facilities in importing countries—

(1) to improve the handling, marketing, processing, storage, and distribution of imported agricultural commodities and products;

(2) to increase livestock production in order to enhance the demand for United States feed grains; and

(3) to increase markets for United States livestock and livestock products.

SEC. 4506. IMPORTED MEAT, POULTRY PRODUCTS, EGGS, AND EGG PRODUCTS.

(a) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Agriculture shall submit a report to Congress—

(1) specifying the planned distribution, in fiscal years 1988 and 1989, of the resources of the Department of Agriculture available for sampling imported covered products to ensure compliance with the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (21 U.S.C. 1031 et seq.) that govern the level of residues of pesticides, drugs, and other products permitted in or on such products;

(2) describing current methods used by the Secretary to enforce the requirements of such Acts with respect to the level of residues of pesticides, drugs, and other products permitted in or on such products;

(3) responding to the audit report of the Inspector General of the Department of Agriculture, Number 38002—2—hy, dated January 14, 1987;

(4) providing a summary with respect to the importation of covered products during fiscal years 1987 and 1988 that specifies—

(A) the number of samples of each such product taken during each such fiscal year in carrying out the requirements described in paragraph (1); and

(B) for each violation of such requirements during each such fiscal year—

(i) the covered products with respect to which such violation occurred;

(ii) the residue in or on such product in violation of such requirements;

(iii) the country exporting such product;

(iv) the actions taken in response to such violation and the reasons for such actions; and

(v) the level of testing conducted by the countries exporting such products;

(5) describing any research conducted by the Secretary to develop improved methods to detect residues subject to such requirements in or on covered products; and

(6) providing any recommendations the Secretary considers appropriate for legislation to add or modify penalties for violations of laws, regulations, and other enforcement requirements governing the level of residues that are permitted in or on imported covered products.

(b) REVISION.—Not later than November 15, 1989, the Secretary of Agriculture shall revise, as necessary, the report prepared under subsection (a) and submit the revision to Congress.

(c) DEFINITION.—As used in this section, the term "covered products" means meat, poultry products, eggs, and egg products.

SEC. 4507. STUDY OF CIRCUMVENTION OF AGRICULTURAL QUOTAS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the

Comptroller General of the United States shall conduct a study with respect to—

(1) whether articles containing dairy products (including chocolate in blocks of at least 10 pounds and other such products) are being imported into the United States in such a manner or in such quantities as to circumvent or avoid the limitations imposed on imports of dairy products under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937; and

(2) whether products containing refined sugar are being imported into the United States in such a manner or in such quantities as to circumvent or avoid the limitations imposed on imports of refined sugar and sugar containing products imposed under Federal law.

(b) REQUIREMENTS.—In conducting the study required under subsection (a), the Comptroller General shall investigate—

(1) the efforts undertaken by the United States Customs Service in the enforcement of the existing quantitative limitations described in subsection (a);

(2) the change in the composition, volume, and pattern of imports containing sugar and imports containing dairy products subsequent to the initial imposition of the quantitative limitations;

(3) the effectiveness of section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, in preventing the circumvention or avoidance of the quantitative limitations; and

(4) the use of United States foreign trade zones to circumvent the quantitative limitations.

(c) REPORT.—On completion of the study required by this section, the Comptroller General shall report the results of the study to the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate.

SEC. 4508. STUDY OF LAMB MEAT IMPORTS.

(a) STUDY.—The Secretary of Agriculture shall conduct a study of the market for lamb meat products in the United States, focusing on production, demand, rate of return on investment, marketing and trends with respect to the level of imports of live lamb and lamb meat products, and the effects of such imports on the production of lamb meat in the United States.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition and Forestry of the Senate a report setting forth the results of such study. If appropriate, the report should include proposals on ways to bring about a long-term increase in per capita consumption of lamb meat products and ways to encourage a more profitable and productive domestic industry to ensure a plentiful and affordable supply of lamb meat.

SEC. 4509. ROSE STUDY.

(a) STUDY.—Not later than 240 days after the date of enactment of this Act, the United States International Trade Commission shall, pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), complete a study with respect to—

(1) competitive factors affecting the domestic rose-growing industry, including competition from imports;

(2) the effect that the European Community's tariff rate for imported roses has on world trade of roses; and

(3) the extent to which unfair trade practices and foreign barriers to trade are impeding the marketing abroad of domestically produced roses.

(b) REPORT.—The Commission shall report the results of the study conducted in accordance with subsection (a) as soon as the study is completed to—

(1) the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives;

(2) the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate;

(3) the United States Trade Representative;

(4) the Secretary of Commerce; and

(5) the Secretary of Agriculture.

(c) REVIEW.—It is the sense of Congress that the United States Trade Representative, the Secretary of Commerce, and the Secretary of Agriculture, should use all available remedies, programs, and policies within their respective jurisdictions to assist the domestic rose industry to maintain and enhance its ability to compete in the domestic and world market for roses if, after their review of the study and report required by this section, such officials determine that such action is appropriate to counter any adverse effects on the domestic rose industry caused by unfair trade practices of foreign competitors.

Subtitle F—Miscellaneous Agricultural Provisions

SEC. 4601. ALLOCATION OF CERTAIN MILK.

Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by adding at the end the following:

"(K)(i) Notwithstanding any other provision of law, milk produced by dairies—

"(I) owned or controlled by foreign persons; and

"(II) financed by or with the use of bonds the interest on which is exempt from Federal income tax under section 103 of the Internal Revenue Code of 1986;

shall be treated as other-source milk, and shall be allocated as milk received from producer-handlers for the purposes of classifying producer milk, under the milk marketing program established under this Act. For the purposes of this subparagraph, the term 'foreign person' has the meaning given such term under section 9(3) of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3508(3)).

"(ii) The Secretary of Agriculture shall prescribe regulations to carry out this subparagraph.

"(iii) This subparagraph shall not apply with respect to any dairy that began operation before May 6, 1986.".

SEC. 4602. PAID ADVERTISING FOR FLORIDA-GROWN STRAWBERRIES UNDER MARKETING ORDERS.

The first proviso of section 8c(6)(I) of the Agricultural Adjustment Act (7 U.S.C. 608c(6)(I)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking out "or tomatoes" and inserting in lieu thereof "tomatoes, or Florida-grown strawberries,".

SEC. 4603. APPLICATION OF MARKETING ORDERS TO IMPORTS.

Section 8e of the Agricultural Adjustment Act (7 U.S.C. 608e-1), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) by inserting "(a)" at the beginning of the first sentence; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) The Secretary may provide for a period of time (not to exceed 35 days) in addition to the period of time covered by a marketing order during which the marketing order requirements would be in effect for a particular commodity during any year if the Secretary determines that such additional period of time is necessary—

"(A) to effectuate the purposes of this Act; and

"(B) to prevent the circumvention of the grade, size, quality, or maturity standards of a seasonal marketing order applicable to a commodity produced in the United States by imports of such commodity.

"(2) In making the determination required by paragraph (1), the Secretary, through notice and comment procedures, shall consider—

"(A) to what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

"(B) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

"(C) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

"(3) An additional period established by the Secretary in accordance with this subsection shall be—

"(A) announced not later than 30 days before the date such additional period is to be in effect; and

"(B) reviewed by the Secretary on request, through notice and comment procedures, at least every 3 years in order to determine if the additional period is still needed to prevent circumvention of the seasonal marketing order by imported commodities.

"(4) For the purposes of carrying out this subsection, the Secretary is authorized to make such reasonable inspections as may be necessary.".

SEC. 4604. RECIPROCAL MEAT INSPECTION REQUIREMENT.

(a) IN GENERAL.—Section 20 of the Federal Meat Inspection Act (21 U.S.C. 620) is amended by adding at the end thereof the following new subsection:

"(h)(1) As used in this subsection:

"(A) The term 'meat articles' means carcasses, meat and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, that are capable of use as human food.

"(B) The term 'standards' means inspection, building construction, sanitary, quality, species verification, residue, and other standards that are applicable to meat articles.

"(2) On request of the Committee on Agriculture or the Committee on Ways and Means of the House of Representatives or the Committee on Agriculture, Nutrition and Forestry or the Committee on Finance of the Senate, or at the initiative of the Secretary, the Secretary shall, as soon as practi-

cable, determine whether a particular foreign country applies standards for the importation of meat articles from the United States that are not related to public health concerns about end-product quality that can be substantiated by reliable analytical methods.

"(3) If the Secretary determines that a foreign country applies standards described in paragraph (2)—

"(A) the Secretary shall consult with the United States Trade Representative; and

"(B) within 30 days after the determination of the Secretary under paragraph (2), the Secretary and the United States Trade Representative shall recommend to the President whether action should be taken under paragraph (4).

"(4) Within 30 days after receiving a recommendation for action under paragraph (3), the President shall, if and for such time as the President considers appropriate, prohibit imports into the United States of any meat articles produced in such foreign country unless it is determined that the meat articles produced in that country meet the standards applicable to meat articles in commerce within the United States.

"(5) The action authorized under paragraph (4) may be used instead of, or in addition to, any other action taken under any other law.".

(b) REPORTS.—Section 20(e) of such Act is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(6) the name of each foreign country that applies standards for the importation of meat articles from the United States that are described in subsection (h)(2).".

SEC. 4605. STUDY OF INTERNATIONAL MARKETING IN LAND GRANT COLLEGES AND UNIVERSITIES.

It is the sense of Congress that—

(1) land grant colleges and universities (as defined in section 1404(10) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(10)) should encourage the study and career objective of international marketing of agricultural commodities and products;

(2) because marketing complements production, international agricultural marketing specialists are needed in a globally competitive world; and

(3) enhanced foreign marketing of United States agricultural commodities and products will help relieve stress in the rural economy.

SEC. 4606. INTERNATIONAL TRADE IN EGGS AND EGG PRODUCTS.

(a) FINDINGS.—Congress finds that—

(1) the system of basic and variable levies of the European Community has severely restricted the export of United States eggs and egg products to European Community member countries;

(2) export subsidies of the European Community have caused displacement of United States egg exports in international markets; and

(3) the Secretary of Agriculture is in the process of certifying the Netherland's inspection procedures for egg products for the purpose of importation into the United States of egg products of the Netherlands.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States Trade Representative should enter into negotiations with the European Community concerning—

(1) duties, tariffs, and other means used by the European Community to limit the access of United States eggs and egg products to European Community markets; and

(2) European Community export subsidies that have had the effect of excluding United States eggs and egg products from other world markets.

SEC. 4607. UNITED STATES ACCESS TO THE KOREAN BEEF MARKET.

(a) FINDINGS.—Congress finds that—

(1) the 1986 United States trade deficit with the Republic of Korea was $7,600,000,000;

(2) the Republic of Korea has banned beef imports since May 1985;

(3) this beef import ban is in contravention of Korea's obligations under the General Agreement on Tariffs and Trade and impairs United States rights under such agreement;

(4) Korea imposes an unreasonably high 20 percent ad valorem tariff on meat products; and

(5) if the Korean beef market were liberalized, the United States, due to comparative advantage, could supply a significant portion of the Korean market for beef, thereby increasing profit opportunities for the United States beef industry while benefiting Korean consumers.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Republic of Korea should take immediate action to fulfill its obligations under the General Agreement on Tariffs and Trade and permit access to its market for United States beef;

(2) the United States should aggressively pursue negotiations to gain access to the Korean market for United States beef;

(3) such negotiations, in addition to elimination of the beef import ban, should address the high tariffs set by the Republic of Korea and the means by which imported beef is distributed in Korea; and

(4) if the Republic of Korea does not show clear evidence that it is engaging in meaningful liberalization of its market for United States beef, the United States should use all available and appropriate means to encourage the Republic of Korea to open its market to United States beef imports.

SEC. 4608. UNITED STATES ACCESS TO JAPANESE AGRICULTURAL MARKETS.

(a) FINDINGS.—Congress finds that—

(1) the United States requested establishment of a panel pursuant to Article XXIII of the General Agreement on Tariffs and Trade (hereinafter in this section referred to as "GATT") to examine Japanese import restrictions on 12 categories of agricultural products;

(2) the GATT panel found that Japanese quantitative restrictions on 10 of the 12 product categories are inconsistent with Article XI of the GATT and recommended that Japan eliminate them or otherwise take action to bring them into conformity with the GATT; and

(3) the rationale behind the GATT panel finding can also be applied to other restrictions that Japan maintains on imports from the United States, including—

(A) a virtual ban on imports of United States rice;

(B) a very restrictive quota on imports of United States beef; and

(C) high tariffs and restrictive quotas on imports of United States citrus.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Government of Japan should immediately take actions to comply with the findings of the GATT panel report;

(2) the Government of Japan should immediately liberalize its trade policies by lowering high tariffs and removing quotas on agricultural imports from the United States, including those imposed on rice, beef, and citrus, in order to avoid any damage to the close relations between Japan and the United States; and

(3) the United States should continue efforts to persuade the Government of Japan to remove its trade barriers.

SEC. 4609. SENSE OF CONGRESS RELATING TO SECTION 22.

It is the sense of Congress that—

(1) the amounts of assessments collected under the no-net-cost tobacco program can be an indicator of import injury and material interference with the tobacco price support program administered by the Secretary of Agriculture; and

(2) for purposes of any investigation conducted under section 22(a) of the Agricultural Adjustment Act (7 U.S.C. 624(a)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, with respect to tobacco, or articles containing tobacco, imported into the United States, the International Trade Commission should take into account, as if they are costs to the Federal government, contributions and assessments imposed under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1 and 1445-2) in determining whether such imported tobacco or articles containing tobacco materially interfere with the tobacco price support program carried out by the Secretary of Agriculture.

SEC. 4610. TECHNICAL CORRECTIONS TO THE AGRICULTURAL AID AND TRADE MISSION PORTION OF PUBLIC LAW 100-202.

(a) SHORT TITLE FOR AGRICULTURAL AID AND TRADE MISSIONS ACT.—That portion of the joint resolution entitled "Joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes" approved December 22, 1987, under the heading "Agricultural Aid and Trade Missions Act" is amended by adding at the end the following:

"SEC. 16. SHORT TITLE.

"Section 1 through this section under the heading 'Agricultural Aid and Trade Missions Act' may be cited as the 'Agricultural Aid and Trade Missions Act'.".

(b) CORRECTION OF INTERNAL REFERENCES.—Sections 1 through 7 of that portion of such joint resolution are each amended by striking out "chapter" each place it appears and inserting "Act" in lieu thereof.

(c) ELIMINATION OF SUPERFLUOUS CATCHLINE.—That portion of such joint resolution is amended by striking out "Subtitle E—Public Law 480 and Related Provisions".

(d) CORRECTION OF CROSS REFERENCE.—Section 13 of that portion of such joint resolution is amended by striking out "section 655 of this Act" and inserting "section 12" in lieu thereof.

Subtitle G—Pesticide Monitoring Improvements

SEC. 4701. SHORT TITLE.

This subtitle may be cited as the "Pesticide Monitoring Improvements Act of 1988".

SEC. 4702. PESTICIDE MONITORING AND ENFORCEMENT INFORMATION.

(a) DATA MANAGEMENT SYSTEMS.—

(1) Not later than 480 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall place in effect computerized data management sys-

tems for the Food and Drug Administration under which the Administration will—

(A) record, summarize, and evaluate the results of its program for monitoring food products for pesticide residues,

(B) identify gaps in its pesticide monitoring program in the monitoring of (i) pesticides, (ii) food products, and (iii) food from specific countries and from domestic sources,

(C) detect trends in the presence of pesticide residues in food products and identify public health problems emerging from the occurrence of pesticide residues in food products,

(D) focus its testing resources for monitoring pesticide residues in food on detecting those residues which pose a public health concern,

(E) prepare summaries of the information listed in subsection (b), and

(F) provide information to assist the Environmental Protection Agency in carrying out its responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act.

(2) As soon as practicable, the Secretary of Health and Human Services shall develop a means to enable the computerized data management systems placed into effect under paragraph (1) to make the summary described in subsection (c).

(3)(A) Paragraph (1) does not limit the authority of the Food and Drug Administration to—

(i) use the computerized data management systems placed in effect under paragraph (1), or

(ii) develop additional data management systems, to facilitate the regulation of any substance or product covered under the requirements of the Federal Food, Drug, and Cosmetic Act.

(B) In placing into effect the computerized data management systems under paragraph (1) and in carrying out paragraph (2), the Secretary shall comply with applicable regulations governing computer system design and procurement.

(b) INFORMATION.—The Food and Drug Administration shall use the computerized data management systems placed into effect under subsection (a)(1) to prepare a summary of—

(1) information on—

(A) the types of imported and domestically produced food products analyzed for compliance with the requirements of the Federal Food, Drug, and Cosmetic Act regarding the presence of pesticide residues,

(B) the number of samples of each such food product analyzed for such compliance by country of origin,

(C) the pesticide residues which may be detected using the testing methods employed,

(D) the pesticide residues in such food detected and the levels detected,

(E) the compliance status of each sample of such food tested and the violation rate for each country-product combination, and

(F) the action taken with respect to each sample of such food found to be in violation of the Federal Food, Drug, and Cosmetic Act and its ultimate disposition, and

(2) information on—

(A) the country of origin of each imported food product referred to in paragraph (1)(A), and

(B) the United States district of entry for each such imported food product.

(c) VOLUME DATA.—The Food and Drug Administration shall use the computerized data management systems placed into effect under subsection (a)(1) to summarize the volume of each type of food product subject to the requirements of the Federal Food, Drug, and Cosmetic Act which is imported into the United States and which has an entry value which exceeds an amount established by the Secretary of Health and Human Services. The summary shall be made by country of origin and district of entry. Information with respect to volumes of food products to be included in the summary shall, to the extent feasible, be obtained from data bases of other Federal agencies.

(d) COMPILATION.—Not later than 90 days after the expiration of 1 year after the data management systems are placed into effect under subsection (a) and annually thereafter, the Secretary of Health and Human Services shall compile a summary of the information described in subsection (b) with respect to the previous year. When the Food and Drug Administration is able to make summaries under subsection (c), the Secretary shall include in the compilation under the preceding sentence a compilation of the information described in subsection (c). Compilations under this subsection shall be made available to Federal and State agencies and other interested persons.

SEC. 4703. FOREIGN PESTICIDE INFORMATION.

(a) COOPERATIVE AGREEMENTS.—The Secretary of Health and Human Services shall enter into cooperative agreements with the governments of the countries which are the major sources of food imports into the United States subject to pesticide residue monitoring by the Food and Drug Administration for the purpose of improving the ability of the Food and Drug Administration to assure compliance with the pesticide tolerance requirements of the Federal Food, Drug, and Cosmetic Act with regard to imported food.

(b) INFORMATION ACTIVITIES.—

(1) The cooperative agreements entered into under subsection (a) with governments of foreign countries shall specify the action to be taken by the parties to the agreements to accomplish the purpose described in subsection (a), including the means by which the governments of the foreign countries will provide to the Secretary of Health and Human Services current information identifying each of the pesticides used in the production, transportation, and storage of food products imported from production regions of such countries into the United States.

(2) In the case of a foreign country with which the Secretary is unable to enter into an agreement under subsection (a) or for which the information provided under paragraph (1) is insufficient to assure an effective pesticide monitoring program, the Secretary shall, to the extent practicable, obtain the information described in paragraph (1) with respect to such country from other Federal or international agencies or private sources.

(3) The Secretary of Health and Human Services shall assure that appropriate offices of the Food and Drug Administration which are engaged in the monitoring of imported food for pesticide residues receive the information obtained under paragraph (1) or (2).

(4) The Secretary of Health and Human Services shall make available any information obtained under paragraph (1) or (2) to State agencies engaged in the monitoring of imported food for pesticide residues other than information obtained from private sources the disclosure of which to such agencies is restricted.

(c) COORDINATION WITH OTHER AGENCIES.—The Secretary of Health and Human Services shall—

(1) notify in writing the Department of Agriculture, the Environmental Protection Agency, and the Department of State at the initiation of negotiations with a foreign country to develop a cooperative agreement under subsection (a); and

(2) coordinate the activities of the Department of Health and Human Services with the activities of those departments and agencies, as appropriate, during the course of such negotiations.

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services shall report to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Labor and Human Resources of the Senate and the House of Representatives on the activities undertaken by the Secretary to implement this section. The report shall be made available to appropriate Federal and State agencies and to interested persons.

SEC. 4704. PESTICIDE ANALYTICAL METHODS.

The Secretary of Health and Human Services shall, in consultation with the Administrator of the Environmental Protection Agency—

(1) develop a detailed long-range plan and timetable for research that is necessary for the development of and validation of—

(A) new and improved analytical methods capable of detecting at one time the presence of multiple pesticide residues in food, and

(B) rapid pesticide analytical methods, and

(2) conduct a review to determine whether the use of rapid pesticide analytical methods by the Secretary would enable the Secretary to improve the cost-effectiveness of monitoring and enforcement activities under the Federal Food, Drug, and Cosmetic Act, including increasing the number of pesticide residues which can be detected and the number of tests for pesticide residues which can be conducted in a cost-effective manner.

The Secretary shall report the plan developed under paragraph (1), the resources necessary to carry out the research described in such paragraph, recommendations for the implementation of such research, and the result of the review conducted under paragraph (2) not later than the expiration of 240 days after the date of the enactment of this Act to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Labor and Human Resources of the Senate and the House of Representatives.

TITLE V—FOREIGN CORRUPT PRACTICES AMENDMENTS; INVESTMENT; AND TECHNOLOGY

Subtitle A—Foreign Corrupt Practices Act Amendments; Review of Certain Acquisitions

PART I—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS

SEC. 5001. SHORT TITLE.

This part may be cited as the "Foreign Corrupt Practices Act Amendments of 1988".

SEC. 5002. PENALTIES FOR VIOLATIONS OF ACCOUNTING STANDARDS.

Section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)) is amended by adding at the end thereof the following:

"(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

"(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

"(6) Where an issuer which has a class of securities registered pursuant to section 12 of this title or an issuer which is required to file reports pursuant to section 15(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

"(7) For the purpose of paragraph (2) of this subsection, the terms 'reasonable assurances' and 'reasonable detail' mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.".

SEC. 5003. FOREIGN CORRUPT PRACTICES ACT AMENDMENTS.

(a) PROHIBITED TRADE PRACTICES BY ISSUERS.—Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) is amended to read as follows:

"PROHIBITED FOREIGN TRADE PRACTICES BY ISSUERS

"SEC. 30A. (a) PROHIBITION.—It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

"(1) any foreign official for purposes of—

"(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

"(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

"(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

"(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

"(b) EXCEPTION FOR ROUTINE GOVERNMENTAL ACTION.—Subsection (a) shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

"(c) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to actions under subsection (a) that—

"(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

"(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

"(A) the promotion, demonstration, or explanation of products or services; or

"(B) the execution or performance of a contract with a foreign government or agency thereof.

"(d) GUIDELINES BY THE ATTORNEY GENERAL.—Not later than one year after the date of the enactment of the Foreign Corrupt Practices Act Amendments of 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

"(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

"(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

"(e) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

"(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not, except with the consent of the issuer, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

"(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

"(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with re-

spect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

"(f) DEFINITIONS.—For purposes of this section:

"(1) The term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.

"(2)(A) A person's state of mind is 'knowing' with respect to conduct, a circumstance, or a result if—

"(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

"(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

"(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

"(3)(A) The term 'routine governmental action' means only an action which is ordinarily and commonly performed by a foreign official in—

"(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

"(ii) processing governmental papers, such as visas and work orders;

"(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

"(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

"(v) actions of a similar nature.

"(B) The term 'routine governmental action' does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.".

(b) VIOLATIONS.—Section 32(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended to read as follows:

"(c)(1)(A) Any issuer that violates section 30A(a) shall be fined not more than $2,000,000.

"(B) Any issuer that violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

"(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 30A(a) shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who willfully violates section 30A(a), shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

"(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.".

(c) PROHIBITED TRADE PRACTICES BY DOMESTIC CONCERNS.—Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) is amended to read as follows:

"PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

"SEC. 104. (a) PROHIBITION.—It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

"(1) any foreign official for purposes of—

"(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

"(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

"(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

"(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

"(b) EXCEPTION FOR ROUTINE GOVERNMENTAL ACTION.—Subsection (a) shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

"(c) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to actions under subsection (a) that—

"(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

"(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

"(A) the promotion, demonstration, or explanation of products or services; or

"(B) the execution or performance of a contract with a foreign government or agency thereof.

"(d) INJUNCTIVE RELIEF.—(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

"(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

"(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under

investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

"(e) GUIDELINES BY THE ATTORNEY GENERAL.—Not later than 6 months after the date of the enactment of the Foreign Corrupt Practices Act Amendments of 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

"(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

"(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

"(f) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

"(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not, except with the consent of the domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

"(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

"(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

"(g) PENALTIES.—(1)(A) Any domestic concern that violates subsection (a) shall be fined not more than $2,000,000.

"(B) Any domestic concern that violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

"(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully violates subsection (a), shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

"(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

"(h) DEFINITIONS.—For purposes of this section:

"(1) The term 'domestic concern' means—

"(A) any individual who is a citizen, national, or resident of the United States; and

"(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

"(2) The term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.

"(3)(A) A person's state of mind is 'knowing' with respect to conduct, a circumstance, or a result if—

"(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

"(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

"(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

"(4)(A) For purposes of paragraph (1), the term 'routine governmental action' means only an action which is ordinarily and commonly performed by a foreign official in—

"(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

"(ii) processing governmental papers, such as visas and work orders;

"(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

"(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

"(v) actions of a similar nature.

"(B) The term 'routine governmental action' does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

"(5) The term 'interstate commerce' means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

"(A) a telephone or other interstate means of communication, or

"(B) any other interstate instrumentality.".

(d) INTERNATIONAL AGREEMENT.—

(1) NEGOTIATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Develop-

ment, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act, the President shall submit to the Congress a report on—

(i) the progress of the negotiations referred to in paragraph (1),

(ii) those steps which the executive branch and the Congress should consider taking in the event that these negotiations do not successfully eliminate any competitive disadvantage of United States businesses that results when persons from other countries commit the acts described in paragraph (1); and

(iii) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

(B) The President shall include in the report submitted under subparagraph (A)—

(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (ii) and (iii) of subparagraph (A);

(ii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

(iii) an assessment of the current and future role of private initiatives in curtailing such acts.

PART II—REVIEW OF CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

SEC. 5021. AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS.

Title VII of the Defense Production Act of 1950 (50 U.S.C. App. 2158 et seq.) is amended by adding at the end thereof the following:

"AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

"SEC. 721. (a) INVESTIGATIONS.—The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

"(b) CONFIDENTIALITY OF INFORMATION.—Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

"(c) ACTION BY THE PRESIDENT.—Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

"(d) FINDINGS OF THE PRESIDENT.—The President may exercise the authority conferred by subsection (c) only if the President finds that—

"(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

"(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701—1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d) of this section shall not be subject to judicial review.

"(e) FACTORS TO BE CONSIDERED.—For purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider among other factors—

"(1) domestic production needed for projected national defense requirements,

"(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services, and

"(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.

"(f) REPORT TO THE CONGRESS.—If the President determines to take action under subsection (c), the President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the action which the President intends to take, including a detailed explanation of the findings made under subsection (d).

"(g) REGULATIONS.—The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

"(h) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.".

Subtitle B—Technology

PART I—TECHNOLOGY COMPETITIVENESS

SEC. 5101. SHORT TITLE.

This part may be cited as the "Technology Competitiveness Act".

Subpart A—National Institute of Standards and Technology

SEC. 5111. FINDINGS AND PURPOSES.

Section 1 of the Act of March 3, 1901 (15 U.S.C. 271) is amended to read as follows:

"FINDINGS AND PURPOSES

"SECTION 1. (a) The Congress finds and declares the following:

"(1) The future well-being of the United States economy depends on a strong manufacturing base and requires continual improvements in manufacturing technology, quality control, and techniques for ensuring product reliability and cost-effectiveness.

"(2) Precise measurements, calibrations, and standards help United States industry and manufacturing concerns compete strongly in world markets.

"(3) Improvements in manufacturing and product technology depend on fundamental scientific and engineering research to develop (A) the precise and accurate measurement methods and measurement standards needed to improve quality and reliability, and (B) new technological processes by which such improved methods may be used in practice to improve manufacturing and to assist industry to transfer important laboratory discoveries into commercial products.

"(4) Scientific progress, public safety, and product compatibility and standardization also depend on the development of precise measurement methods, standards, and related basic technologies.

"(5) The National Bureau of Standards since its establishment has served as the Federal focal point in developing basic measurement standards and related technologies, has taken a lead role in stimulating cooperative work among private industrial organizations in efforts to surmount technological hurdles, and otherwise has been responsible for assisting in the improvement of industrial technology.

"(6) The Federal Government should maintain a national science, engineering, and technology laboratory which provides measurement methods, standards, and associated technologies and which aids United States companies in using new technologies to improve products and manufacturing processes.

"(7) Such national laboratory also should serve industry, trade associations, State technology programs, labor organizations, professional societies, and educational institutions by disseminating information on new basic technologies including automated manufacturing processes.

"(b) It is the purpose of this Act—

"(1) to rename the National Bureau of Standards as the National Institute of Standards and Technology and to modernize and restructure that agency to augment its unique ability to enhance the competitiveness of American industry while maintaining its traditional function as lead national laboratory for providing the measurements, calibrations, and quality assurance techniques which underpin United States commerce, technological progress, improved product reliability and manufacturing processes, and public safety;

"(2) to assist private sector initiatives to capitalize on advanced technology;

"(3) to advance, through cooperative efforts among industries, universities, and government laboratories, promising research and development projects, which can be optimized by the private sector for commercial and industrial applications; and

"(4) to promote shared risks, accelerated development, and pooling of skills which will be necessary to strengthen America's manufacturing industries.".

SEC. 5112. ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES.

(a) ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES OF THE INSTITUTE.—Section 2 of the Act of March 3, 1901 (15 U.S.C. 272) is amended to read as follows:

"ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES

"SEC. 2. (a) There is established within the Department of Commerce a science, engineering, technology, and measurement laboratory to be known as the National Institute of Standards and Technology (hereafter in this Act referred to as the 'Institute'.)

"(b) The Secretary of Commerce (hereafter in this Act referred to as the 'Secretary') acting through the Director of the Institute (hereafter in this Act referred to as the 'Director') and, if appropriate, through other officials, is authorized to take all actions necessary and appropriate to accomplish the purposes of this Act, including the following functions of the Institute—

"(1) to assist industry in the development of technology and procedures needed to improve quality, to modernize manufacturing processes, to ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of products based on new scientific discoveries in fields such as automation, electronics, advanced materials, biotechnology, and optical technologies;

"(2) to develop, maintain, and retain custody of the national standards of measurement, and provide the means and methods for making measurements consistent with those standards, including comparing standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government;

"(3) to enter into contracts, including cooperative research and development arrangements, in furtherance of the purposes of this Act;

"(4) to provide United States industry, Government, and educational institutions with a national clearinghouse of current information, techniques, and advice for the achievement of higher quality and productivity based on current domestic and international scientific and technical development;

"(5) to assist industry in the development of measurements, measurement methods, and basic measurement technology;

"(6) to determine, compile, evaluate, and disseminate physical constants and the properties and performance of conventional and advanced materials when they are important to science, engineering, manufacturing, education, commerce, and industry and are not available with sufficient accuracy elsewhere;

"(7) to develop a fundamental basis and methods for testing materials, mechanisms, structures, equipment, and systems, including those used by the Federal Government;

"(8) to assure the compatibility of United States national measurement standards with those of other nations;

"(9) to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards;

"(10) to advise government and industry on scientific and technical problems; and

"(11) to invent, develop, and (when appropriate) promote transfer to the private sector of measurement devices to serve special national needs.

"(c) In carrying out the functions specified in subsection (b), the Secretary, acting through the Director and, if appropriate, through other appropriate officials, may, among other things—

"(1) construct physical standards;

"(2) test, calibrate, and certify standards and standard measuring apparatus;

"(3) study and improve instruments, measurement methods, and industrial process control and quality assurance techniques;

"(4) cooperate with the States in securing uniformity in weights and measures laws and methods of inspection;

"(5) cooperate with foreign scientific and technical institutions to understand technological developments in other countries better;

"(6) prepare, certify, and sell standard reference materials for use in ensuring the accuracy of chemical analyses and measurements of physical and other properties of materials;

"(7) in furtherance of the purposes of this Act, accept research associates, cash donations, and donated equipment from industry, and also engage with industry in research to develop new basic and generic technologies for traditional and new products and for improved production and manufacturing;

"(8) study and develop fundamental scientific understanding and improved measurement, analysis, synthesis, processing, and fabrication methods for chemical substances and compounds, ferrous and nonferrous metals, and all traditional and advanced materials, including processes of degradation;

"(9) investigate ionizing and nonionizing radiation and radioactive substances, their uses, and ways to protect people, structures, and equipment from their harmful effects;

"(10) determine the atomic and molecular structure of matter, through analysis of spectra and other methods, to provide a basis for predicting chemical and physical structures and reactions and for designing new materials and chemical substances, including biologically active macromolecules;

"(11) perform research on electromagnetic waves, including optical waves, and on properties and performance of electrical, electronic, and electromagnetic devices and systems and their essential materials, develop and maintain related standards, and disseminate standard signals through broadcast and other means;

"(12) develop and test standard interfaces, communication protocols, and data structures for computer and related telecommunications systems;

"(13) study computer systems (as that term is defined in section 20(d) of this Act) and their use to control machinery and processes;

"(14) perform research to develop standards and test methods to advance the effective use of computers and related systems and to protect the information stored, processed, and transmitted by such systems and to provide advice in support of policies affecting Federal computer and related telecommunications systems;

"(15) determine properties of building materials and structural elements, and encourage their standardization and most effective use, including investigation of fire-resisting properties of building materials and conditions under which they may be most efficiently used, and the standardization of types of appliances for fire prevention;

"(16) undertake such research in engineering, pure and applied mathematics, statistics, computer science, materials science, and the physical sciences as may be necessary to carry out and support the functions specified in this section;

"(17) compile, evaluate, publish, and otherwise disseminate general specific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere;

"(18) collect, create, analyze, and maintain specimens of scientific value;

"(19) operate national user facilities;

"(20) evaluate promising inventions and other novel technical concepts submitted by inventors and small companies and work with other Federal agencies, States, and localities to provide appropriate technical assistance and support for those inventions which are found in the evaluation process to have commercial promise;

"(21) demonstrate the results of the Institute's activities by exhibits or other methods of technology transfer, including the use of scientific or technical personnel of the Institute for part-time or intermittent teaching and training activities at educational institutions of higher learning as part of and incidental to their official duties; and

"(22) undertake such other activities similar to those specified in this subsection as the Director determines appropriate.".

(b) OTHER FUNCTIONS OF SECRETARY.—The Secretary of Commerce is authorized to—

(1) conduct research on all of the telecommunications sciences, including wave propagation and reception, the conditions which affect electromagnetic wave propagation and reception, electromagnetic noise and interference, radio system characteristics, operating techniques affecting the use of the electromagnetic spectrum, and methods for improving the use of the electromagnetic spectrum for telecommunications purposes;

(2) prepare and issue predictions of electromagnetic wave propagation conditions and warnings of disturbances in such conditions;

(3) investigate conditions which affect the transmission of radio waves from their source to a receiver and the compilation and distribution of information on such transmission of radio waves as a basis for choice of frequencies to be used in radio operations;

(4) conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies;

(5) investigate nonionizing electromagnetic radiation and its uses, as well as methods and procedures for measuring and assessing electromagnetic environments, for the purpose of developing and coordinating policies and procedures affecting Federal Government use of the electromagnetic spectrum for telecommunications purposes;

(6) compile, evaluate, publish, and otherwise disseminate general scientific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere; and

(7) undertake such other activities similar to those specified in this subsection as the

Secretary of Commerce determines appropriate.

(c) DIRECTOR OF INSTITUTE.—(1) Section 5 of the Act of March 3, 1901 (15 U.S.C. 274) is amended to read as follows:

"SEC. 5. The Director shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have the general supervision of the Institute, its equipment, and the exercise of its functions. The Director shall make an annual report to the Secretary of Commerce. The Director may issue, when necessary, bulletins for public distribution, containing such information as may be of value to the public or facilitate the exercise of the functions of the Institute. The Director shall be compensated at the rate in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Until such time as the Director assumes office under this section, the most recent Director of the National Bureau of Standards shall serve as Director.".

(2) Section 5315 of title 5, United States Code, is amended by striking "National Bureau of Standards" and inserting in lieu thereof "National Institute of Standards and Technology".

(d) ORGANIZATION PLAN.—(1) At least 60 days before its effective date and within 120 days after the date of the enactment of this Act, an initial organization plan for the National Institute of Standards and Technology (hereafter in this part referred to as the "Institute") shall be submitted by the Director of the Institute (hereafter in this part referred to as the "Director") after consultation with the Visiting Committee on Advanced Technology, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such plan shall—

(A) establish the major operating units of the Institute;

(B) assign each of the activities listed in section 2(c) of the Act of March 3, 1901, and all other functions and activities of the Institute, to at least one of the major operating units established under subparagraph (A);

(C) provide details of a 2-year program for the Institute, including the Advanced Technology Program;

(D) provide details regarding how the Institute will expand and fund the Inventions program in accordance with section 27 of the Act of March 3, 1901; and

(E) make no changes in the Center for Building Technology or the Center for Fire Research.

(2) The Director may revise the organization plan. Any revision of the organization plan submitted under paragraph (1) shall be submitted to the appropriate committees of the House of Representatives and the Senate at least 60 days before the effective date of such revision.

(3) Until the effective date of the organization plan, the major operating units of the Institute shall be the major operating units of the National Bureau of Standards that were in existence on the date of the enactment of this Act and the Advanced Technology Program.

SEC. 5113. REPEAL OF PROVISIONS.

The second paragraph of the material relating to the Bureau of Standards in the first section of the Act of July 16, 1914 (15 U.S.C. 280), the last paragraph of the material relating to Contingent and Miscellaneous Expenses in the first section of the Act of March 4, 1913 (15 U.S.C. 281), and the first section of the Act of May 14, 1930 (15 U.S.C. 282) are repealed.

SEC. 5114. REPORTS TO CONGRESS; STUDIES BY THE NATIONAL ACADEMIES OF ENGINEERING AND SCIENCES.

The Act of March 3, 1901 (15 U.S.C. 271 et seq.) is amended—

(1) by redesignating section 23 as section 31; and

(2) by adding after section 22 the following new sections:

"REPORTS TO CONGRESS

"SEC. 23. (a) The Director shall keep the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with regard to all of the activities of the Institute.

"(b) The Director shall justify in writing all changes in policies regarding fees for standard reference materials and calibration services occurring after June 30, 1987, including a description of the anticipated impact of any proposed changes on demand for and anticipated revenues from the materials and services. Changes in policy and fees shall not be effective unless and until the Director has submitted the proposed schedule and justification to the Congress and 30 days on which both Houses of Congress are in session have elapsed since such submission, except that the requirement of this sentence shall not apply with respect to adjustments which are based solely on changes in the costs of raw materials or of producing and delivering standard reference materials or calibration services.

"STUDIES BY THE NATIONAL RESEARCH COUNCIL

"SEC. 24. The Director may periodically contract with the National Research Council for advice and studies to assist the Institute to serve United States industry and science. The subjects of such advice and studies may include—

"(1) the competitive position of the United States in key areas of manufacturing and emerging technologies and research activities which would enhance that competitiveness;

"(2) potential activities of the Institute, in cooperation with industry and the States, to assist in the transfer and dissemination of new technologies for manufacturing and quality assurance; and

"(3) identification and assessment of likely barriers to widespread use of advanced manufacturing technology by the United States workforce, including training and other initiatives which could lead to a higher percentage of manufacturing jobs of United States companies being located within the borders of our country.".

SEC. 5115. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO ORGANIC ACT.—(1) Except as provided in paragraph (2), the Act of March 3, 1901 (15 U.S.C. 271 et seq.) is amended by striking "National Bureau of Standards", "Bureau" and "bureau" wherever they appear and inserting in lieu thereof "Institute".

(2) Section 31 of such Act, as so redesignated by section 5114(1) of this part, is amended by striking "National Bureau of Standards" and inserting in lieu thereof "National Institute of Standards and Technology".

(b) AMENDMENTS TO STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—(1) Section 8(b) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122 of this part, is amended by striking "Director" and inserting in lieu thereof "Assistant Secretary".

(2) Sections 11(e) and 17(d) and (e) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, are amended—

(A) by striking "National Bureau of Standards" wherever it appears and inserting in lieu thereof "National Institute of Standards and Technology"; and

(B) by striking "Bureau" wherever it appears and inserting in lieu thereof "Institute".

(c) AMENDMENTS TO OTHER LAWS.—References in any other Federal law to the National Bureau of Standards shall be deemed to refer to the National Institute of Standards and Technology.

Subpart B—Technology Extension Activities and Clearinghouse on State and Local Initiatives

SEC. 5121. TECHNOLOGY EXTENSION ACTIVITIES.

(a) TECHNOLOGY CENTERS AND TECHNICAL ASSISTANCE.—The Act of March 3, 1901, as amended by this part, is further amended by adding after section 24 the following new sections:

"REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

"SEC. 25. (a) The Secretary, through the Director and, if appropriate, through other officials, shall provide assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology (hereafter in this Act referred to as the 'Centers'). Such centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance under this section in accordance with the description published by the Secretary in the Federal Register under subsection (c)(2). Individual awards shall be decided on the basis of merit review. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through—

"(1) the transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

"(2) the participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

"(3) efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

"(4) the active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

"(5) the utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute.

"(b) The activities of the Centers shall include—

"(1) the establishment of automated manufacturing systems and other advanced production technologies, based on research by the Institute, for the purpose of demonstrations and technology transfer;

"(2) the active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

"(3) loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

"(c)(1) The Secretary may provide financial support to any Center created under subsection (a) for a period not to exceed six years. The Secretary may not provide to a Center more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such Center.

"(2) The Secretary shall publish in the Federal Register, within 90 days after the date of the enactment of this section, a draft description of a program for establishing Centers, including—

"(A) a description of the program;

"(B) procedures to be followed by applicants;

"(C) criteria for determining qualified applicants;

"(D) criteria, including those listed under paragraph (4), for choosing recipients of financial assistance under this section from among the qualified applicants; and

"(E) maximum support levels expected to be available to Centers under the program in the fourth through sixth years of assistance under this section.

The Secretary shall publish a final description under this paragraph after the expiration of a 30-day comment period.

"(3) Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on the date of the enactment of this section, may submit to the Secretary an application for financial support under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph (2). In order to receive assistance under this section, an applicant shall provide adequate assurances that it will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the last three years. Each applicant shall also submit a proposal for the allocation of the legal rights associated with any invention which may result from the proposed Center's activities.

"(4) The Secretary shall subject each such application to merit review. In making a decision whether to approve such application and provide financial support under this subsection, the Secretary shall consider at a minimum (A) the merits of the application, particularly those portions of the application regarding technology transfer, training and education, and adaptation of manufacturing technologies to the needs of particular industrial sectors, (B) the quality of service to be provided, (C) geographical diversity and extent of service area, and (D) the percentage of funding and amount of in-kind commitment from other sources.

"(5) Each Center which receives financial assistance under this section shall be evaluated during its third year of operation by an evaluation panel appointed by the Secretary. Each such evaluation panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of the Institute shall chair the panel. Each evaluation panel shall measure the involved Center's performance against the objectives specified in this section. The Secretary shall not provide funding for the fourth through the sixth years of such Center's operation unless the evaluation is positive. If the evaluation is positive, the Secretary may provide continued funding through the sixth year at declining levels, which are designed to ensure that the Center no longer needs financial support from the Institute by the seventh year. In no event shall funding for a Center be provided by the Department of Commerce after the sixth year of the operation of a Center.

"(6) The provisions of chapter 18 of title 35, United States Code, shall (to the extent not inconsistent with this section) apply to the promotion of technology from research by Centers under this section.

"(d) There are authorized to be appropriated for the purposes of carrying out this section, a combined total of not to exceed $40,000,000 for fiscal years 1989 and 1990. Such sums shall remain available until expended.

"ASSISTANCE TO STATE TECHNOLOGY PROGRAMS

"SEC. 26. (a) In addition to the Centers program created under section 25, the Secretary, through the Director and, if appropriate, through other officials, shall provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-sized businesses, to enhance their competitiveness through the application of science and technology.

"(b) Such assistance from the Institute to State technology programs shall include, but not be limited to—

"(1) technical information and advice from Institute personnel;

"(2) workshops and seminars for State officials interested in transferring Federal technology to businesses; and

"(3) entering into cooperative agreements when authorized to do so under this or any other Act.".

(b) TECHNOLOGY EXTENSION SERVICES.—(1) The Secretary shall conduct a nationwide study of current State technology extension services. The study shall include—

(A) a thorough description of each State program, including its duration, its annual budget, and the number and types of businesses it has aided;

(B) a description of any anticipated expansion of each State program and its associated costs;

(C) an evaluation of the success of the services in transferring technology, modernizing manufacturing processes, and improving the productivity and profitability of businesses;

(D) an assessment of the degree to which State services make use of Federal programs, including the Small Business Innovative Research program and the programs of the Federal Laboratory Consortium, the National Technical Information Service, the National Science Foundation, the Office of Productivity, Technology, and Innovation, and the Small Business Administration;

(E) a survey of what additional Federal information and technical assistance the services could utilize; and

(F) an assessment of how the services could be more effective agents for the transfer of Federal scientific and technical information, including the results and application of Federal and federally funded research.

The Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, at the time of submission of the organization plan for the Institute under section 5112(d)(1), the results of the study and an initial implementation plan for the programs under section 26 of the Act of March 3, 1901, and under this section. The implementation plan shall include methods of providing technical assistance to States and criteria for awarding financial assistance under this section. The Secretary may make use of contractors and experts for any or all of the studies and findings called for in this section.

(2)(A) The Institute shall enter into cooperative agreements with State technology extension services to—

(i) demonstrate methods by which the States can, in cooperation with Federal agencies, increase the use of Federal technology by businesses within their States to improve industrial competitiveness; or

(ii) help businesses in their States take advantage of the services and information offered by the Regional Centers for the Transfer of Manufacturing Technology created under section 25 of the Act of March 3, 1901.

(B) Any State, for itself or for a consortium of States, may submit to the Secretary an application for a cooperative agreement under this subsection, in accordance with procedures established by the Secretary. To qualify for a cooperative agreement under this subsection, a State shall provide adequate assurances that it will increase its spending on technology extension services by an amount at least equal to the amount of Federal assistance.

(C) In evaluating each application, the Secretary shall consider—

(i) the number and types of additional businesses that will be assisted under the cooperative agreement;

(ii) the extent to which the State extension service will demonstrate new methods to increase the use of Federal technology;

(iii) geographic diversity; and

(iv) the ability of the State to maintain the extension service after the cooperative agreement has expired.

(D) States which are party to cooperative agreements under this subsection may provide services directly or may arrange for the provision of any or all of such services by institutions of higher education or other non-profit institutions or organizations.

(3) In carrying out section 26 of the Act of March 3, 1901, and this subsection, the Secretary shall coordinate the activities with the Federal Laboratory Consortium; the National Technical Information Service; the National Science Foundation; the Office of Productivity, Technology, and Innovation; the Small Business Administration; and other appropriate Federal agencies.

(4) There are authorized to be appropriated for the purposes of this subsection $2,000,000 for each of the fiscal years 1989, 1990, and 1991.

(5) Cooperative agreements entered into under paragraph (2) shall terminate no later than September 30, 1991.

(c) FEDERAL TECHNOLOGY TRANSFER ACT OF 1986.—Nothing in sections 25 or 26 of the Act of March 3, 1901, or in subsection (b) of this section shall be construed as limiting the authorities contained in the Federal Technology Transfer Act of 1986 (Public Law 99-502).

(d) NON-ENERGY INVENTIONS PROGRAM.—The Act of March 3, 1901, as amended by this part, is further amended by adding after section 26 the following new section:

"NON-ENERGY INVENTIONS PROGRAM

"SEC. 27. In conjunction with the initial organization of the Institute, the Director shall establish a program for the evaluation of inventions that are not energy-related to complement but not replace the Energy-Related Inventions Program established under section 14 of the Federal Nonnuclear Energy Research and Development Act of 1974

(Public Law 93-577). The Director shall submit an initial implementation plan for this program to accompany the organization plan for the Institute. The implementation plan shall include specific cost estimates, implementation schedules, and mechanisms to help finance the development of technologies the program has determined to have potential. In the preparation of the plan, the Director shall consult with appropriate Federal agencies, including the Small Business Administration and the Department of Energy, State and local government organizations, university officials, and private sector organizations in order to obtain advice on how those agencies and organizations might cooperate with the expansion of this program of the Institute.".

SEC. 5122. CLEARINGHOUSE ON STATE AND LOCAL INITIATIVES.

(a) CLEARINGHOUSE.—The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) is amended—

(1) by redesignating sections 6 through 19 as sections 7 through 20, respectively; and

(2) by inserting after section 5 the following new section:

"SEC. 6. CLEARINGHOUSE FOR STATE AND LOCAL INITIATIVES ON PRODUCTIVITY, TECHNOLOGY, AND INNOVATION.

"(a) ESTABLISHMENT.—There is established within the Office of Productivity, Technology, and Innovation a Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation. The Clearinghouse shall serve as a central repository of information on initiatives by State and local governments to enhance the competitiveness of American business through the stimulation of productivity, technology, and innovation and Federal efforts to assist State and local governments to enhance competitiveness.

"(b) RESPONSIBILITIES.—The Clearinghouse may—

"(1) establish relationships with State and local governments, and regional and multistate organizations of such governments, which carry out such initiatives;

"(2) collect information on the nature, extent, and effects of such initiatives, particularly information useful to the Congress, Federal agencies, State and local governments, regional and multistate organizations of such governments, businesses, and the public throughout the United States;

"(3) disseminate information collected under paragraph (2) through reports, directories, handbooks, conferences, and seminars;

"(4) provide technical assistance and advice to such governments with respect to such initiatives, including assistance in determining sources of assistance from Federal agencies which may be available to support such initiatives;

"(5) study ways in which Federal agencies, including Federal laboratories, are able to use their existing policies and programs to assist State and local governments, and regional and multistate organizations of such governments, to enhance the competitiveness of American business;

"(6) make periodic recommendations to the Secretary, and to other Federal agencies upon their request, concerning modifications in Federal policies and programs which would improve Federal assistance to State and local technology and business assistance programs;

"(7) develop methodologies to evaluate State and local programs, and, when requested, advise State and local governments, and regional and multistate organizations of such governments, as to which programs are most effective in enhancing the competitiveness of American business through the stimulation of productivity, technology, and innovation; and

"(8) make use of, and disseminate, the nationwide study of State industrial extension programs conducted by the Secretary.

"(c) CONTRACTS.—In carrying out subsection (b), the Secretary may enter into contracts for the purpose of collecting information on the nature, extent, and effects of initiatives.

"(d) TRIENNIAL REPORT.—The Secretary shall prepare and transmit to the Congress once each 3 years a report on initiatives by State and local governments to enhance the competitiveness of American businesses through the stimulation of productivity, technology, and innovation. The report shall include recommendations to the President, the Congress, and to Federal agencies on the appropriate Federal role in stimulating State and local efforts in this area. The first of these reports shall be transmitted to the Congress before January 1, 1989.".

(b) DEFINITION.—Section 4 of such Act is amended by adding at the end thereof the following new paragraph:

"(13) 'Clearinghouse' means the Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation established by section 6.".

(c) CONFORMING AMENDMENT.—Section 10(d) of such Act, as so redesignated by section 5122(a)(1) of this part, is amended by striking "6, 8, 10, 14, 16, or 17" and inserting in lieu thereof "7, 9, 11, 15, 17, or 18".

Subpart C—Advanced Technology Program

SEC. 5131. ADVANCED TECHNOLOGY.

(a) ADVANCED TECHNOLOGY PROGRAM.—The Act of March 3, 1901, as amended by this part, is further amended by adding after section 27 the following new section:

"ADVANCED TECHNOLOGY PROGRAM

"SEC. 28. (a) There is established in the Institute an Advanced Technology Program (hereafter in this Act referred to as the 'Program') for the purpose of assisting United States businesses in creating and applying the generic technology and research results necessary to—

"(1) commercialize significant new scientific discoveries and technologies rapidly; and

"(2) refine manufacturing technologies.

The Secretary, acting through the Director, shall assure that the Program focuses on improving the competitive position of the United States and its businesses, gives preference to discoveries and to technologies that have great economic potential, and avoids providing undue advantage to specific companies.

"(b) Under the Program established in subsection (a), and consistent with the mission and policies of the Institute, the Secretary, acting through the Director, and subject to subsections (c) and (d), may—

"(1) aid United States joint research and development ventures (hereafter in this section referred to as 'joint ventures') (which may also include universities and independent research organizations), including those involving collaborative technology demonstration projects which develop and test prototype equipment and processes, through—

"(A) provision of organizational and technical advice; and

"(B) participation in such joint ventures, if the Secretary, acting through the Director, determines participation to be appropriate, which may include (i) partial start-up funding, (ii) provision of a minority share of the cost of such joint ventures for up to 5 years, and (iii) making available equipment, facilities, and personnel,

provided that emphasis is placed on areas where the Institute has scientific or technological expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets;

"(2) enter into contracts and cooperative agreements with United States businesses, especially small businesses, and with independent research organizations, provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;

"(3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and

"(4) carry out, in a manner consistent with the provisions of this section, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

"(c) The Secretary, acting through the Director, is authorized to take all actions necessary and appropriate to establish and operate the Program, including—

"(1) publishing in the Federal Register draft criteria and, no later than six months after the date of the enactment of this section, following a public comment period, final criteria, for the selection of recipients of assistance under subsection (b)(1) and (2);

"(2) monitoring how technologies developed in its research program are used, and reporting annually to the Congress on the extent of any overseas transfer of these technologies;

"(3) establishing procedures regarding financial reporting and auditing to ensure that contracts and awards are used for the purposes specified in this section, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the Program.

"(4) assuring that the advice of the Committee established under section 10 is considered routinely in carrying out the responsibilities of the Institute; and

"(5) providing for appropriate dissemination of Program research results.

"(d) When entering into contracts or making awards under subsection (b), the following shall apply:

"(1) No contract or award may be made until the research project in question has been subject to a merit review, and has, in the opinion of the reviewers appointed by the Director and the Secretary, acting through the Director, been shown to have scientific and technical merit.

"(2) In the case of joint ventures, the Program shall not make an award unless, in the judgment of the Secretary, acting through the Director, Federal aid is needed if the industry in question is to form a joint venture quickly.

"(3) No Federal contract or cooperative agreement under subsection (b)(2) shall exceed $2,000,000 over 3 years, or be for more than 3 years unless a full and complete explanation of such proposed award, including reasons for exceeding these limits, is submitted in writing by the Secretary to the

Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The proposed contract or cooperative agreement may be executed only after 30 calendar days on which both Houses of Congress are in session have elapsed since such submission. Federal funds made available under subsection (b)(2) shall be used only for direct costs and not for indirect costs, profits, or management fees of the contractor.

"(4) In determining whether to make an award to a particular joint venture, the Program shall consider whether the members of the joint venture have made provisions for the appropriate participation of small United States businesses in such joint venture.

"(5) Section 552 of title 5, United States Code, shall not apply to the following information obtained by the Federal Government on a confidential basis in connection with the activities of any business or any joint venture receiving funding under the Program—

"(A) information on the business operation of any member of the business or joint venture; and

"(B) trade secrets possessed by any business or any member of the joint venture.

"(6) Intellectual property owned and developed by any business or joint venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program.

"(7) The Federal Government shall be entitled to a share of the licensing fees and royalty payments made to and retained by any business or joint venture to which it contributes under this section in an amount proportional to the Federal share of the costs incurred by the business or joint venture as determined by independent audit.

"(8) If a business or joint venture fails before the completion of the period for which a contract or award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

"(9) Upon dissolution of any joint venture or at the time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

"(e) As used in this section, the term 'joint research and development venture' has the meaning given to such term in section 2(a)(6) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6)).".

(b) VISITING COMMITTEE ON ADVANCED TECHNOLOGY.—Section 10 of the Act of March 3, 1901, is amended to read as follows:

"VISITING COMMITTEE ON ADVANCED TECHNOLOGY

"SEC. 10. (a) There is established within the Institute a Visiting Committee on Advanced Technology (hereafter in this Act referred to as the 'Committee'). The Committee shall consist of nine members appointed by the Director, at least five of whom shall be from United States industry. The Director shall appoint as original members of the Committee any final members of the National Bureau of Standards Visiting Committee who wish to serve in such capacity. In addition to any powers and functions otherwise granted to it by this Act, the Committee shall review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

"(b) The persons appointed as members of the Committee—

"(1) shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations;

"(2) shall be selected solely on the basis of established records of distinguished service;

"(3) shall not be employees of the Federal Government; and

"(4) shall be so selected as to provide representation of a cross-section of the traditional and emerging United States industries.

The Director is requested, in making appointments of persons as members of the Committee, to give due consideration to any recommendations which may be submitted to the Director by the National Academies, professional societies, business associations, labor associations, and other appropriate organizations.

"(c)(1) The term of office of each member of the Committee, other than the original members, shall be 3 years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person who has completed two consecutive full terms of service on the Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

"(2) The original members of the Committee shall be elected to three classes of three members each; one class shall have a term of one year, one a term of two years, and the other a term of three years.

"(d) The Committee shall meet at least quarterly at the call of the Chairman or whenever one-third of the members so request in writing. A majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee shall constitute a quorum. Each member shall be given appropriate notice, whenever possible, not less than 15 days prior to any meeting, of the call of such meeting.

"(e) The Committee shall have an executive committee, and may delegate to it or to the Secretary such of the powers and functions granted to the Committee by this Act as it deems appropriate. The Committee is authorized to appoint from among its members such other committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Committee deems appropriate to assist it in exercising its powers and functions under this Act.

"(f) The election of the Chairman and Vice Chairman of the Committee shall take place at each annual meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Committee shall elect a member to fill such vacancy.

"(g) The Committee may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than four professional staff members and such clerical staff members as may be necessary. Such staff shall be appointed by the Director, after consultation with the Chairman of the Committee, and assigned at the direction of the Committee. The professional members of such staff may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and the provisions of chapter 51 of title 5 of such Code relating to classification, and compensated at a rate not exceeding the appropriate rate provided for individuals in grade GS-18 of the General Schedule under section 5332 of title 5 of such Code, as may be necessary to provide for the performance of such duties as may be prescribed by the Committee in connection with the exercise of its powers and functions under this Act.

"(h)(1) The Committee shall render an annual report to the Secretary for submission to the Congress on or before January 31 in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, including the Program established under section 28, or with which the Committee in its official role as the private sector policy advisor of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute possesses special competence, which could be used to assist United States enterprises and United States industrial joint research and development ventures.

"(2) The Committee shall render to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.".

(c) NATIONAL ACADEMIES OF SCIENCES AND ENGINEERING STUDY OF GOVERNMENT-INDUSTRY COOPERATION IN CIVILIAN TECHNOLOGY.—(1) Within 90 days after the date of enactment of this Act, the Secretary of Commerce shall enter into contracts with the National Academies of Sciences and Engineering for a thorough review of the various types of arrangements under which the private sector in the United States and the Federal Government cooperate in civilian research and technology transfer, including activities to create or apply generic, nonproprietary technologies. The purpose of the review is to provide the Secretary and Congress with objective information regarding the uses, strengths, and limitations of the various types of cooperative technology arrangements that have been used in the United States. The review is to provide both an analysis of the ways in which these arrangements can help improve the technological performance and international competitiveness of United States industry, and also to provide the Academies's recommendations regarding ways to improve the effectiveness and efficiency of these types of cooperative arrangements. A special emphasis shall be placed on discussions of these subjects among industry leaders, labor leaders, and officials of the executive branch and Congress. The Secretary is authorized to seek and accept funding for this study from both Federal agencies and private industry.

(2) The members of the review panel shall be drawn from among industry and labor leaders, entrepreneurs, former government officials with great experience in civilian research and technology, and scientific and technical experts, including experts with experience with Federal laboratories.

(3) The review shall analyze the strengths and weaknesses of different types of Federal-industry cooperative arrangements in civil-

ian technology, including but not limited to—

(A) Federal programs which provide technical services and information to United States companies;

(B) cooperation between Federal laboratories and United States companies, including activities under the Technology Share Program created by Executive Order 12591;

(C) Federal research and technology transfer arrangements with selected business sectors;

(D) Federal encouragement of, and assistance to, private joint research and development ventures; and

(E) such other mechanisms of Federal-industry cooperation as may be identified by the Secretary.

(4) A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President, and Congress within 18 months after the Secretary signs the contracts with the National Academies of Sciences and Engineering.

Subpart D—Technology Reviews

SEC. 5141. REPORT OF PRESIDENT.

The President shall, at the time of submission of the budget request for fiscal year 1990 to Congress, also submit to the Congress a report on—

(1) the President's policies and budget proposals regarding Federal research in semiconductors and semiconductor manufacturing technology, including a discussion of the respective roles of the various Federal departments and agencies in such research;

(2) the President's policies and budget proposals regarding Federal research and acquisition policies for fiber optics and optical-electronic technologies generally;

(3) the President's policies and budget proposals, identified by agency, regarding superconducting materials, including descriptions of research priorities, the scientific and technical barriers to commercialization which such research is designed to overcome, steps taken to ensure coordination among Federal agencies conducting research on superconducting materials, and steps taken to consult with private United States industry and to ensure that no unnecessary duplication of research exists and that all important scientific and technical barriers to the commercialization of superconducting materials will be addressed; and

(4) the President's policies and budget proposals, identified by agency, regarding Federal research to assist United States industry to develop and apply advanced manufacturing technologies for the production of durable and nondurable goods.

SEC. 5142. SEMICONDUCTOR RESEARCH AND DEVELOPMENT.

(a) SHORT TITLE.—This section may be cited as the "National Advisory Committee on Semiconductor Research and Development Act of 1988".

(b) FINDINGS AND PURPOSES.—(1) The Congress finds and declares that—

(A) semiconductor technology is playing an ever-increasing role in United States industrial and commercial products and processes, making secure domestic sources of state-of-the-art semiconductors highly desirable;

(B) modern weapons systems are highly dependent on leading edge semiconductor devices, and it is counter to the national security interest to be heavily dependent upon foreign sources for this technology;

(C) governmental responsibilities related to the semiconductor industry are divided among many Federal departments and agencies; and

(D) joint industry-government consideration of semiconductor industry problems is needed at this time.

(2) The purposes of this section are—

(A) to establish the National Advisory Committee on Semiconductors; and

(B) to assign to such Committee the responsibility for devising and promulgating a national semiconductor strategy, including research and development, the implementation of which will assure the continued leadership of the United States in semiconductor technology.

(c) CREATION OF COMMITTEE.—There is hereby created in the executive branch of the Government an independent advisory body to be known as the National Advisory Committee on Semiconductors (hereafter in this section referred to as the "Committee").

(d) FUNCTIONS.—(1) The Committee shall—

(A) collect and analyze information on the needs and capabilities of industry, the Federal Government, and the scientific and research communities related to semiconductor technology;

(B) identify the components of a successful national semiconductor strategy in accordance with subsection (b)(2)(B);

(C) analyze options, establish priorities, and recommend roles for participants in the national strategy;

(D) assess the roles for government and national laboratories and other laboratories supported largely for government purposes in contributing to the semiconductor technology base of the Nation, as well as to access the effective use of the resources of United States private industry, United States universities, and private-public research and development efforts; and

(E) provide results and recommendations to agencies of the Federal Government involved in legislative, policymaking, administrative, management, planning, and technology activities that affect or are part of a national semiconductor strategy, and to the industry and other nongovernmental groups or organizations affected by or contributing to that strategy.

(2) In fulfilling this responsibility, the Committee shall—

(A) monitor the competitiveness of the United States semiconductor technology base;

(B) determine technical areas where United States semiconductor technology is deficient relative to international competition;

(C) identify new or emerging semiconductor technologies that will impact the national defense or United States competitiveness or both;

(D) develop research and development strategies, tactics, and plans whose execution will assure United States semiconductor competitiveness; and

(E) recommend appropriate actions that support the national semiconductor strategy.

(e) MEMBERSHIP AND PROCEDURES.—(1)(A) The Committee shall be composed of 13 members, 7 of whom shall constitute a quorum.

(B) The Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Director of the Office of Science and Technology Policy, and the Director of the National Science Foundation, or their designees, shall serve as members of the Committee.

(C) The President, acting through the Director of the Office of Science and Technology Policy, shall appoint, as additional members of the Committee, 4 members from outside the Federal Government who are eminent in the semiconductor industry, and 4 members from outside the Federal Government who are eminent in the fields of technology, defense, and economic development.

(D) One of the members appointed under subparagraph (C), as designated by the President at the time of appointment, shall be chairman of the Committee.

(2) Funding and administrative support for the Committee shall be provided to the Office of Science and Technology Policy through an arrangement with an appropriate agency or organization designated by the Committee, in accordance with a memorandum of understanding entered into between them.

(3) Members of the Committee, other than full-time employees of the Federal Government, while attending meetings of the Committee or otherwise performing duties at the request of the Chairman while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(4) The Chairman shall call the first meeting of the Committee not later than 90 days after the date of the enactment of this Act.

(5) At the close of each fiscal year the Committee shall submit to the President and the Congress a report on its activities conducted during such year and its planned activities for the coming year, including specific findings and recommendations with respect to the national semiconductor strategy devised and promulgated under subsection (b)(2)(B). The first report shall include an analysis of those technical areas, including manufacturing, which are of importance to the United States semiconductor industry, and shall make specific recommendations regarding the appropriate Federal role in correcting any deficiencies identified by the analysis. Each report shall include an estimate of the length of time the Committee must continue before the achievement of its purposes and the issuance of its final report.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this section such sums as may be necessary for the fiscal years 1988, 1989, and 1990.

SEC. 5143. REVIEW OF RESEARCH AND DEVELOPMENT PRIORITIES IN SUPERCONDUCTORS.

(a) NATIONAL COMMISSION ON SUPERCONDUCTIVITY.—The President shall appoint a National Commission on Superconductivity to review all major policy issues regarding United States applications of recent research advances in superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies.

(b) MEMBERSHIP.—The membership of the National Commission on Superconductivity shall include representatives of—

(1) the National Critical Materials Council, the National Academy of Sciences, the National Academy of Engineering, the National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, the Department of Justice, the Department of Commerce (including the National Institute of Standards and Technology), the Department of Transportation, the Department of the Treasury, and the Department of Defense;

(2) organizations whose membership is comprised of physicists, engineers, chemical scientists, or material scientists; and

(3) industries, universities, and national laboratories engaged in superconductivity research.

(c) CHAIRMAN.—A representative of the private sector shall be designated as chairman of the Commission.

(d) COORDINATION.—The National Critical Materials Council shall be the coordinating body of the National Commission on Superconductivity and shall provide staff support for the Commission.

(e) REPORT.—Within 6 months after the date of the enactment of this Act, the National Commission on Superconductivity shall submit a report to the President and the Congress with recommendations regarding methods of enhancing the research, development, and implementation of improved superconductor technologies in all major applications.

(f) SCOPE OF REVIEW.—In preparing the report required by subsection (e), the Commission shall consider addressing, but need not limit, its review to—

(1) the state of United States competitiveness in the development of improved superconductors;

(2) methods to improve and coordinate the collection and dissemination of research data relating to superconductivity;

(3) methods to improve and coordinate funding of research and development of improved superconductors;

(4) methods to improve and coordinate the development of viable commercial and military applications of improved superconductors;

(5) foreign government activities designed to promote research, development, and commercial application of improved superconductors;

(6) the need to provide increased Federal funding of research and development of improved superconductors;

(7) the impact on the United States national security if the United States must rely on foreign producers of superconductors;

(8) the benefit, if any, of granting private companies partial exemptions from United States antitrust laws to allow them to coordinate research, development, and products containing improved superconductors;

(9) options for providing income tax incentives for encouraging research, development, and production in the United States of products containing improved superconductors; and

(10) methods to strengthen domestic patent and trademark laws to ensure that qualified superconductivity discoveries receive the fullest protection from infringement.

(g) SUNSET.—The Commission shall disband within a year of its establishment. Thereafter the National Critical Materials Council may review and update the report required by subsection (e) and make further recommendations as it deems appropriate.

Subpart E—Authorization of Appropriations

SEC. 5151. AUTHORIZATION OF APPROPRIATIONS FOR TECHNOLOGY ACTIVITIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1988 to the Secretary of Commerce to carry out activities performed by the Institute the sums set forth in the following line items:

(1) Measurement Research and Technology: $41,939,000.

(2) Engineering Measurements and Manufacturing: $40,287,000.

(3) Materials Science and Engineering: $23,521,000.

(4) Computer Science and Technology: $7,941,000.

(5) Research Support Activities: $19,595,000.

(6) Cold Neutron Source Facility: $6,500,000 (for a total authorization of $13,000,000).

(7) Programs established under sections 25, 26, and 27 of the Act of March 3, 1901 and section 5121 of this part: $5,000,000.

(b) LIMITATIONS.—Notwithstanding any other provision of this or any other Act—

(1) of the total of the amounts authorized under subsection (a), $2,000,000 is authorized only for steel technology;

(2) of the amount authorized under paragraph (1) of subsection (a) of this section, $3,550,000 is authorized only for the purpose of research in process and quality control;

(3) of the amount authorized under paragraph (2) of subsection (a) of this section, $3,710,000 is authorized only for the Center for Building Technology, $5,662,000 is authorized only for the Center for Fire Research, and the two Centers shall not be merged;

(4) of the amount authorized under paragraph (3) of subsection (a) of this section, $1,500,000 is authorized only for the purpose of research to improve high-performance composites; and

(5) of the amount authorized under paragraph (5) of subsection (a) of this section, $7,371,000 is authorized only for technical competence fund projects in new areas of high technical importance, and $1,091,000 is authorized only for the Postdoctoral Research Associates Program and related new personnel.

(c) TRANSFER.—(1) Funds may be transferred among the line items listed in subsection (a) of this section so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in such subsection and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(2) In addition, the Secretary of Commerce may propose transfers to or from any line item exceeding 10 percent of the amount authorized for the line item in subsection (a) of this section, but a full and complete explanation of any such proposed transfer and the reason for such transfer must be transmitted in writing to the President of the Senate, the Speaker of the House of Representatives, and the appropriate authorizing committees of the Senate and House of Representatives. The proposed transfer may be made only when 30 calendar days have passed after the transmission of such written explanation.

(d) COLD NEUTRON SOURCE FACILITY.—In addition to any sums otherwise authorized by this part, there are authorized to be appropriated to the Secretary of Commerce for fiscal years 1988, 1989, and 1990 such sums as were authorized but not appropriated for the Cold Neutron Source Facility for fiscal year 1987. Furthermore, the Secretary may accept contributions for funds, to remain available until expended, for the design, construction, and equipment of the Cold Neutron Source Facility, notwithstanding the limitations of section 14 of the Act of March 3, 1901 (15 U.S.C. 278d).

(e) EMPLOYEE BENEFIT ADJUSTMENTS.—In addition to any sums otherwise authorized by this part, there are authorized to be appropriated to the Secretary of Commerce for fiscal year 1988 such additional sums as may be necessary to make any adjustments in salary, pay, retirement, and other employee benefits which may be provided for by law.

(f) AVAILABILITY.—Appropriations made under the authority provided in this section shall remain available for obligation, for expenditure, or for obligations and expenditure for periods specified in the Acts making such appropriations.

SEC. 5152. STEVENSON-WYDLER ACT AUTHORIZATIONS.

Section 19(a) and (b) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, is amended to read as follows:

"(a)(1) There is authorized to be appropriated to the Secretary for the purposes of carrying out sections 5, 11(g), and 16 of this Act not to exceed $3,400,000 for the fiscal year ending September 30, 1988.

"(2) Of the amount authorized under paragraph (1) of this subsection, $2,400,000 is authorized only for the Office of Productivity, Technology, and Innovation; $500,000 is authorized only for the purpose of carrying out the requirements of the Japanese technical literature program established under section 5(d) of this Act; and $500,000 is authorized only for the patent licensing activities of the National Technical Information Service.

"(b) In addition to the authorization of appropriations provided under subsection (a) of this section, there is authorized to be appropriated to the Secretary for the purposes of carrying out section 6 of this Act not to exceed $500,000 for the fiscal year ending September 30, 1988, $1,000,000 for the fiscal year ending September 30, 1989, and $1,500,000 for the fiscal year ending September 30, 1990.".

Subpart F—Miscellaneous Technology and Commerce Provisions

SEC. 5161. SAVINGS PROVISION AND USER FEES.

The Act of March 3, 1901 (15 U.S.C. 271 et seq.), as amended by this part, is further amended by adding after section 28 the following new sections:

"SAVINGS PROVISION

"SEC. 29. All rules and regulations, determinations, standards, contracts, certifications, authorizations, delegations, results and findings of investigations, or other actions duly issued, made, or taken by or pursuant to this Act, or under the authority of any other statutes which resulted in the assignment of functions or activities to the Secretary, the Department, the Director, or the Institute, as are in effect immediately before the date of enactment of this section, and not suspended by the Secretary, the Director, the Institute or the courts, shall continue in full force and effect after the date of enactment of this section until modified or rescinded.

"USER FEES

"SEC. 30. The Institute shall not implement a policy of charging fees with respect to the use of Institute research facilities by research associates in the absence of express statutory authority to charge such fees.".

SEC. 5162. MISCELLANEOUS AMENDMENTS TO THE STEVENSON-WYDLER ACT.

(a) INVENTION MANAGEMENT SERVICES.—The first sentence of section 14(a)(4) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part (15 U.S.C. 3710c) is amended by striking out "shall" and insert-

ing in lieu thereof "may", and by striking out "such invention performed at the request of the other agency or laboratory" and inserting in lieu thereof "any invention of the other agency".

(b) FEDERAL LABORATORY CONSORTIUM.—Section 11(e)(7)(A) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part (15 U.S.C. 3710) is amended by striking out "0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by" and inserting in lieu thereof "0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of".

SEC. 5163. MISCELLANEOUS TECHNOLOGY AND COMMERCE PROVISIONS.

(a) ASSESSMENT OF EMERGING TECHNOLOGIES.—The Board of Assessment of the National Institute of Standards and Technology shall include, as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Institute abreast of its mission, including process and quality control, engineering databases, advanced materials, electronics and fiber optics, bioprocess engineering, and advanced computing concepts. Such review shall include estimates of the cost of the required effort, required staffing levels, appropriate interaction with industry, including technology transfer, and the period over which the research will be required.

(b) SMALL BUSINESS PLAN.—The Director of the National Institute of Standards and Technology shall prepare a plan detailing the manner in which the Institute will make small businesses more aware of the Institute's activities and research, and the manner in which the Institute will seek to increase the application by small businesses of the Institute's research, particularly in manufacturing. The plan shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than 120 days after the date of the enactment of this Act.

(c) NATIONAL TECHNICAL INFORMATION SERVICE.—(1) Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, is amended by inserting at the end the following new subsection:

"(h) None of the activities or functions of the National Technical Information Service which are not performed by contractors as of September 30, 1987, shall be contracted out or otherwise transferred from the Federal Government unless such transfer is expressly authorized by statute, or unless the value of all work performed under the contract and related contracts in each fiscal year does not exceed $250,000.".

(2) The Secretary of Commerce shall report the Secretary's recommendations for improvements in the National Technical Information Service (including methods for automating document distribution and inventory control), and any statutory changes required to make such improvements, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives by January 31, 1989.

(3) Section 11(d) of the Stevenson-Wydler Technology Innovation Act of 1980, as so redesignated by section 5122(a)(1) of this part, is amended—

(A) by striking "and" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(6) maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical, and engineering information.".

(d) FELLOWSHIP PROGRAM.—There is established within the Department of Commerce a Commerce, Science, and Technology Fellowship Program with the stated purpose of providing a select group of employees of the executive branch of the Government with the opportunity of learning how the legislative branch and other parts of the executive branch function through work experiences of up to one year. The Secretary of Commerce shall report to the Congress within six months after the date of enactment of this Act on the Department of Commerce's plans for implementing such Program by March 31, 1989.

SEC. 5164. METRIC USAGE.

(a) FINDINGS.—Section 2 of the Metric Conversion Act of 1975 is amended by adding at the end thereof the following new paragraphs:

"(3) World trade is increasingly geared towards the metric system of measurement.

"(4) Industry in the United States is often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and is sometimes excluded when it is unable to deliver goods which are measured in metric terms.

"(5) The inherent simplicity of the metric system of measurement and standardization of weights and measures has led to major cost savings in certain industries which have converted to that system.

"(6) The Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small business, as it voluntarily converts to the metric system of measurement.

"(7) The metric system of measurement can provide substantial advantages to the Federal Government in its own operations.".

(b) POLICY.—Section 3 of the Metric Conversion Act of 1975 is amended to read as follows:

"SEC. 3. It is therefore the declared policy of the United States—

"(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce;

"(2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units;

"(3) to seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications; and

"(4) to permit the continued use of traditional systems of weights and measures in nonbusiness activities.".

(c) IMPLEMENTATION.—The Metric Conversion Act of 1975 is further amended by redesignating section 12 as section 13, and by inserting after section 11 the following new section:

"SEC. 12. (a) As soon as possible after the date of the enactment of this section, each agency of the Federal Government shall establish guidelines to carry out the policy set forth in section 3 (with particular emphasis upon the policy set forth in paragraph (2) of that section), and as part of its annual budget submission for each fiscal year beginning after such date shall report to the Congress on the actions which it has taken during the previous fiscal year, as well as the actions which it plans for the fiscal year involved, to implement fully the metric system of measurement in accordance with that policy. Such reporting shall cease for an agency in the fiscal year after it has fully implemented its efforts under section 3(2). As used in this section, the term 'agency of the Federal Government' means an Executive agency or military department as those terms are defined in chapter 1 of title 5, United States Code.

"(b) At the end of the fiscal year 1992, the Comptroller General shall review the implementation of this Act, and upon completion of such review shall report his findings to the Congress along with any legislative recommendations he may have.".

PART II—SYMMETRICAL ACCESS TO TECHNOLOGICAL RESEARCH

SEC. 5171. SYMMETRICAL ACCESS TO TECHNOLOGICAL RESEARCH.

(a) Section 502 of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656b) is amended by adding at the end the following new paragraph:

"(5) Federally supported international science and technology agreements should be negotiated to ensure that—

"(A) intellectual property rights are properly protected; and

"(B) access to research and development opportunities and facilities, and the flow of scientific and technological information, are, to the maximum extent practicable, equitable and reciprocal.".

(b) Section 503(b) of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656c(b)) is amended—

(1) by striking "Congress" and inserting in lieu thereof "the Speaker of the House of Representatives and the Committees on Foreign Relations and Governmental Affairs of the Senate";

(2) by inserting "information and" before "recommendations";

(3) by striking "and" at the end of paragraph (1);

(4) by striking the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(5) by adding at the end the following new paragraph:

"(3) equity of access by United States public and private entities to public (and publicly supported private) research and development opportunities and facilities in each country which is a major trading partner of the United States.".

(c) Section 503 of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656c) is amended by adding at the end the following new subsection:

"(d)(1) The information and recommendations developed under subsection (b)(3) shall be made available to the United States Trade Representative for use in his consultations with Federal agencies pursuant to Executive orders pertaining to the transfer of science and technology.

"(2) In providing such information and recommendations, the President shall utilize information developed by any Federal departments, agencies, or interagency committees as he may consider necessary.".

(d) Section 504(a) of the Foreign Relations Authorization Act, Fiscal Year 1979 (22 U.S.C. 2656d(a)) is amended to read as follows:

"(a)(1) In order to implement the policies set forth in section 502 of this title, the Secretary of State (hereafter in this section referred to as the "Secretary") shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States and foreign countries, international organizations, or commissions of which the United States and one or more foreign countries are members.

"(2) In coordinating and overseeing such agreements and activities, the Secretary shall consider (A) scientific merit; (B) equity of access as described in section 503(b); (C) possible commercial or trade linkages with the United States which may flow from the agreement or activity; (D) national security concerns; and (E) any other factors deemed appropriate.

"(3) Prior to entering into negotiations on such an agreement or activity, the Secretary shall provide Federal agencies which have primary responsibility for, or substantial interest in, the subject matter of the agreement or activity, including those agencies responsible for—

"(A) Federal technology management policies set forth by Public Law 96-517 and the Stevenson-Wydler Technology Innovation Act of 1980;

"(B) national security policies;

"(C) United States trade policies; and

"(D) relevant Executive orders,

with an opportunity to review the proposed agreement or activity to ensure its consistency with such policies and Executive orders, and to ensure effective interagency coordination.".

PART III—NATIONAL CRITICAL MATERIALS COUNCIL

SEC. 5181. THE NATIONAL FEDERAL PROGRAM PLAN FOR ADVANCED MATERIALS RESEARCH AND DEVELOPMENT.

The National Critical Materials Council shall prepare the national Federal program plan for advanced materials research and development under section 205(a)(1)(A) of the National Critical Materials Act of 1984 (Public Law 98-373; 98 Stat. 1251) and shall submit such plan to Congress not later than 180 days after the date of the enactment of this Act. The plan shall be submitted to the Committee on Science, Space, and Technology, as well as other appropriate committees, of the House of Representatives, and to the Committee on Governmental Affairs, as well as other appropriate committees, of the Senate.

SEC. 5182. PERSONNEL MATTERS.

(a) REQUIREMENT TO INCREASE STAFF.—Not later than 30 days after the date of the enactment of this Act, the Executive Director of the National Critical Materials Council shall increase the number of employees of the Council by the equivalent of 5 full-time employees over the number of employees of the Council on the date of the enactment of this Act.

(b) QUALIFICATIONS OF STAFF.—Not less than the equivalent of 4 full-time employees appointed pursuant to subsection (a) shall be permanent professional employees who have expertise in technical fields that are relevant to the responsibilities of the National Critical Materials Council, such as materials science and engineering, environmental matters, minerals and natural resources, ceramic or composite engineering, metallurgy, and geology.

SEC. 5183. AUTHORITY TO ACCEPT SERVICES AND PERSONNEL FROM OTHER FEDERAL AGENCIES.

Section 210(4) of the National Critical Materials Act of 1984 (Public Law 98-373; 98 Stat. 1254) is amended by striking out "reimbursable" and inserting in lieu thereof "nonreimbursable".

SEC. 5184. AUTHORIZATION OF APPROPRIATIONS.

Section 211 of the National Critical Materials Act of 1984 (Public Law 98-373; 98 Stat. 1254) is amended by striking out "1990" and inserting in lieu thereof "1992".

Subtitle C—Competitiveness Policy Council Act

SEC. 5201. SHORT TITLE.

This subtitle may be cited as the "Competitiveness Policy Council Act".

SEC. 5202. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) efforts to reverse the decline of United States industry has been hindered by—

(A) a serious erosion in the institutions and policies which foster United States competitiveness including a lack of high quality domestic and international economic and scientific data needed to—

(i) reveal sectoral strengths and weaknesses;

(ii) identify potential new markets and future technological and economic trends; and

(iii) provide necessary information regarding the competitive strategies of foreign competitors;

(B) the lack of a coherent and consistent government competitiveness policy, including policies with respect to—

(i) international trade, finance, and investment,

(ii) research, science, and technology,

(iii) education, labor retraining, and adjustment,

(iv) macroeconomic and budgetary issues,

(v) antitrust and regulation, and

(vi) government procurement;

(2) the United States economy benefits when business, labor, government, academia, and public interest groups work together cooperatively;

(3) the decline of United States economic competitiveness endangers the ability of the United States to maintain the defense industrial base which is necessary to the national security of the United States;

(4) the world is moving rapidly toward the creation of an integrated and interdependent economy, a world economy in which the policies of one nation have a major impact on other nations;

(5) integrated solutions to such issues as trade and investment research, science, and technology, education, and labor retraining and adjustments help the United States compete more effectively in the world economy;

(6) government, business, labor, academia, and public interest groups shall cooperate to develop and coordinate long-range strategies to help assure the international competitiveness of the United States economy.

(b) PURPOSE.—It is the purpose of this subtitle—

(1) to develop recommendations for long-range strategies for promoting the international competitiveness of the United States industries; and

(2) to establish the Competitiveness Policy Council which shall—

(A) analyze information regarding the competitiveness of United States industries and business and trade policy;

(B) create an institutional forum where national leaders with experience and background in business, labor, government, academia, and public interest activities shall—

(i) identify economic problems inhibiting the competitiveness of United States agriculture, business, and industry;

(ii) develop long-term strategies to address such problem; and

(C) make recommendations on issues crucial to the development of coordinated competitiveness strategies;

(D) publish analysis in the form of periodic reports and recommendations concerning the United States business and trade policy.

SEC. 5203. COUNCIL ESTABLISHED.

There is established the Competitiveness Policy Council (hereafter in this subtitle referred to as the "Council"), an advisory committee under the provisions of the Federal Advisory Committee Act (5 U.S.C App.).

SEC. 5204. DUTIES OF THE COUNCIL.

The Council shall—

(1) develop recommendations for national strategies and on specific policies intended to enhance the productivity and international competitiveness of United States industries;

(2) provide comments, when appropriate, and through any existing comment procedure, on—

(A) private sector requests for governmental assistance or relief, specifically as to whether the applicant is likely, by receiving the assistance or relief, to become internationally competitive; and

(B) what actions should be taken by the applicant as a condition of such assistance or relief to ensure that the applicant is likely to become internationally competitive;

(3) analyze information concerning current and future United States economic competitiveness useful to decision making in government and industry;

(4) create a forum where national leaders with experience and background in business, labor, academia, public interest activities, and government shall identify and develop recommendations to address problems affecting the economic competitiveness of the United States;

(5) evaluate Federal policies, regulations, and unclassified international agreement on trade, science, and technology to which the United States is a party with respect to the impact on United States competitiveness;

(6) provide policy recommendations to the Congress, the President, and the Federal departments and agencies regarding specific issues concerning competitiveness strategies;

(7) monitor the changing nature of research, science, and technology in the United States and the changing nature of the United States economy and its capacity—

(A) to provide marketable, high quality goods and services in domestic and international markets; and

(B) to respond to international competition;

(8) identify—

(A) Federal and private sector resources devoted to increased competitiveness; and

(B) State and local government programs devised to enhance competitiveness, including joint ventures between universities and corporations;

(9) establish, when appropriate, subcouncils of public and private leaders to develop recommendations on long-term strategies for sectors of the economy and for specific competitiveness issues;

(10) review policy recommendations developed by the subcouncils and transmit such recommendations to the Federal agencies responsible for the implementation of such recommendations;

(11) prepare, publish, and distribute reports containing the recommendations of the Council; and

(12) publish their analysis and recommendations in the form of an annual report to the President and the Congress which also comments on the overall competitiveness of the American economy.

SEC. 5205. MEMBERSHIP.

(a) COMPOSITION AND REPRESENTATION.—

(1) The Council shall consist of 12 members, of whom—

(A) four members shall be appointed by the President, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader who has been active in public interest activities; and

(iv) one shall be a head of a Federal department or agency;

(B) four members shall be appointed by the majority leader and the minority leader of the Senate, acting jointly, of whom—

(i) one shall be a national leader with experience or background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government; and

(C) four members shall be appointed by the Speaker, the minority leader of the House of Representatives, acting jointly, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government.

(2) In addition to the head of a Federal department or agency appointed in accordance with subsection (a)(1)(A)(iv), other Federal officials may participate on an ex-officio basis as requested by the Council.

(3) All members of the Council shall be individuals who have a broad understanding of the United States economy and the United States competitive position internationally.

(4) Not more than 6 members of the Council shall be members of the same political party.

(b) INITIAL APPOINTMENTS.—The initial members of the Council shall be appointed within 30 days after January 21, 1989.

(c) VACANCIES.—

(1) A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Any member appointed to fill a vacancy on the Council occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(3) A member of the Council may serve after the expiration of the term of such member until the successor of such member has taken office.

(d) REMOVAL.—Members of the Council may be removed only for malfeasance in office.

(e) CONFLICT OF INTEREST.—

(1) A member of the Council may not serve as an agent for a foreign principal.

(2) Members of the Council shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (Public Law 95-521), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.

(3) Members of the Council shall be deemed to be special Government employees, as defined in section 202 of title 18, United States Code, for purposes of sections 201, 202, 203, 205, and 208 of such title.

(f) COMPENSATION.—

(1) Each member of the Council who is not employed by the Federal Government or any State or local government—

(A) shall be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule pursuant to section 5332 of title 5, United States Code, for each day such member is engaged in duties as a member of the Council; and

(B) shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with section 5703 of such title.

(2) Each member of the Council who is employed by the Federal Government or any State or local government shall serve on the Council without additional compensation, but while engaged in duties as a member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(g) QUORUM.—

(1) IN GENERAL.—Seven members of the Council constitute a quorum, except that a lesser number may hold hearings if such action is approved by a two-thirds vote of the entire Council.

(2) INITIAL ORGANIZATION.—The Council shall not commence its duties until all the nongovernmental members have been appointed and have qualified.

(h) CHAIRPERSON.—The Council shall elect, by a two-thirds vote of the entire Council, a chairperson from among the nongovernmental members.

(i) MEETINGS.—The Council shall meet at the call of the chairperson or a majority of the members.

(j) POLICY ACTIONS.—Except as provided in subsection (g), no action establishing policy shall be taken by the Council unless approved by two-thirds of the entire membership of the Council.

(k) ALTERNATE MEMBERS.—

(1) Each member of the Council shall designate one alternate representative to attend any meeting that such member is unable to attend.

(2) In the course of attending any such meeting, an alternate representative shall be considered a member of the Council for all purposes, except for voting.

(l) EXPERTS AND CONSULTANTS.—The Council may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS-16 of the General Schedule.

(m) DETAILS.—Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subtitle.

SEC. 5206. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) The principal administrative officer of the Council shall be an Executive Director, who shall be appointed by the Council and who shall be paid at a rate not to exceed GS-18 of the General Schedule.

(2) The Executive Director shall serve on a full-time basis.

(b) STAFF.—(1) Within the limitations of appropriations to the Council, the Executive Director may appoint a staff for the Council in accordance with the Federal civil service and classification laws.

(2) The staff of the Council shall be deemed to be special government employees as defined in section 202 of title 18, United States Code, for purposes of title II of the Ethics in Government Act of 1978 and sections 201, 202, 203, 205, 207, and 208 of title 18, United States Code.

SEC. 5207. POWERS OF THE COUNCIL.

(a) HEARINGS.—The Council may, for the purpose of carrying out the provisions of this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council considers appropriate. The Council may administer oaths or affirmations to witnesses appearing before the Council.

(b) INFORMATION.—

(1)(A) Except as provided in subparagraph (B), the Council may secure directly from any Federal agency information necessary to enable the Council to carry out the provisions of this subtitle. Upon request of the chairman of the Council, the head of such agency shall promptly furnish such information to the Council.

(B) Subparagraph (A) does not apply to matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) In any case in which the Council receives any information from a Federal agency, the Council shall not disclose such information to the public unless such agency is authorized to disclose such information pursuant to Federal law.

(d) CONSULTATION WITH THE PRESIDENT AND THE CONGRESS.—No later than 60 days after the initial members are appointed to the Council, the Council shall submit a report to the President, the Senate Governmental Affairs Committee, and the appropriate committees of the House of Representatives and of the Senate, that proposes the type and scope of activities the Council shall undertake, including the extent to which the Council will coordinate activities with other advisory committees relating to trade and competitiveness in order to maximize the effectiveness of the Council.

(e) GIFTS.—The Council may accept, use, and dispose of gifts or donations of services or property.

(f) USE OF THE MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(g) ADMINISTRATIVE AND SUPPORT SERVICES.—The Administrator of General Serv-

ices shall provide to the Council, on a reimbursable basis, such administrative and support services as the Council may request.

(h) SUBCOUNCILS.—

(1) The Council may establish, for such period of time as the Council determines appropriate, subcouncils of public and private leaders to analyze specific competitive issues.

(2) Any such subcouncil shall include representatives of business, labor, government, and other individuals or representatives of groups whose participation is considered by the Council to be important to developing a full understanding of the subject with which the subcouncil is concerned.

(3) Any such subcouncil shall include a representative of the Federal Government.

(4) Any such subcouncil shall assess the actual or potential competitiveness problems facing the industry or the specific policy issues with which the subcouncil is concerned and shall formulate specific recommendations for responses by business, government, and labor—

(A) to encourage adjustment and modernization of the industry involved;

(B) to monitor and facilitate industry responsiveness to opportunities identified under section 5208(b)(1)(B);

(C) to encourage the ability of the industry involved to compete in markets identified under section 5208(b)(1)(C); or

(D) to alleviate the problems in a specific policy area facing more than one industry.

(5) Any discussion held by any subcouncil shall not be considered to violate any Federal or State antitrust law.

(6) Any discussion held by any subcouncil shall not be subject to the provisions of the Federal Advisory Committee Act, except that a Federal representative shall attend all subcouncil meetings.

(7) Any subcouncil shall terminate 30 days after making recommendations, unless the Council specifically requests that the subcouncil continue in operation.

(i) APPLICABILITY OF ADVISORY COMMITTEE ACT.—The provisions of subsections (e) and (f) of section 10, of the Federal Advisory Committee Act shall not apply to the Council.

SEC. 5208. ANNUAL REPORT.

(a) SUBMISSION OF REPORT.—The Council shall annually prepare and submit to the President, the Senate Governmental Affairs Committee, and the appropriate Committees of the House of Representatives and the Senate a report setting forth—

(1) the goals to achieve a more competitive United States economy;

(2) the policies needed to meet such goals;

(3) a summary of existing policies of the Federal Government or State and local governments significantly affecting the competitiveness of the United States economy; and

(4) a summary of significant economic and technological developments, in the United States and abroad, affecting the competitive position of United States industries.

(b) CONTENTS OF REPORT.—The report submitted under subsection (a) shall—

(1) identify and describe actual or foreseeable developments, in the United States and abroad, which—

(A) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry;

(B) present significant opportunities for United States industries to compete in new geographical markets or product markets, or to expand the position of such industries in established markets; or

(C) create a significant risk that United States industries shall be unable to compete successfully in significant markets;

(2) specify the industry sectors affected by the developments described in the report under paragraph (1); and

(3) contain a statement of the findings and recommendations of the Council during the previous fiscal year, including any recommendations of the Council for (a) such legislative or administrative actions as the Council considers appropriate, and (B) including the elimination, consolidation, reorganization of government agencies especially such agencies that specifically deal with research, science, technology, and international trade.

(c) REPORT BY CONGRESSIONAL COMMITTEES.—The Council shall consult with each committee to which a report is submitted under this section and after such consultation, each such committee shall submit to its respective House a report setting forth the views and recommendations of such committee with respect to the report of the Council.

SEC. 5209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of the fiscal years 1989 and 1990 such sums as may be necessary not to exceed $5,000,000 to carry out the provisions of this subtitle.

SEC. 5210. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Council" means the Competitiveness Policy Council established under section 5203;

(2) the term "member" means a member of the Competitiveness Policy Council;

(3) the term "United States" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States; and

(4) the term "agent of a foreign principal" is defined as such term is defined under subsection (d) of the first section of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611) subject to the provisions of section 3 of such Act (22 U.S.C. 613).

Subtitle D—Federal Budget Competitiveness Impact Statement

SEC. 5301. PRESIDENT'S ANNUAL BUDGET SUBMISSION.

Subsection (a) of section 1105 of title 31, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(26) an analysis, prepared by the Office of Management and Budget after consultation with the chairman of the Council of Economic Advisers, of the budget's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based upon the best information available at the time, for the fiscal year for which the budget is submitted—

"(A) the amount of borrowing by the Government in private credit markets;

"(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

"(C) net private domestic investment;

"(D) the merchandise trade and current accounts;

"(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

"(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.".

SEC. 5302. ANNUAL CONCURRENT RESOLUTION ON THE BUDGET.

Subsection (e) of section 301 of the Congressional Budget Act of 1974 (2 U.S.C. 632(e)) is amended by "and" at the end of paragraph (8), by striking out the period and by inserting "; and" at the end of paragraph (9), and by inserting at the end thereof the following new paragraph:

"(10) an analysis, prepared after consultation with the Director of the Congressional Budget Office, of the concurrent resolution's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based upon the best information available at the time, for the fiscal year covered by the concurrent resolution—

"(A) the amount of borrowing by the Government in private credit markets;

"(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

"(C) net private domestic investment;

"(D) the merchandise trade and current accounts;

"(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

"(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.".

SEC. 5303. EFFECTIVE DATE.

The amendment made by section 5301 shall be effective for fiscal years 1989, 1990, 1991, and 1992, and shall be fully reflected in the budgets submitted by the President as required by section 1105(a) of title 31, United States Code, for each such fiscal year, and the amendment made by section 5302 shall be effective for fiscal years 1989, 1990, 1991, and 1992.

Subtitle E—Trade Data and Studies

PART I—NATIONAL TRADE DATA BANK

SEC. 5401. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Committee" means the Interagency Trade Data Advisory Committee;

(2) the term "Data Bank" means the National Trade Data Bank;

(3) the term "Executive agency" has the same meaning as in section 105 of title 5, United States Code;

(4) the term "export promotion data system" means the data system known as the Commercial Information Management System which is maintained and operated by the United States and Foreign Commercial Service and is established as part of the Data Bank under section 3816;

(5) the term "international economic data system" means the data system established as part of the Data Bank under section 5406 which contains data useful to policymakers and analysis concerned with international economics; and

(6) the term "Secretary" means the Secretary of Commerce.

SEC. 5402. INTERAGENCY TRADE DATA ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established the Interagency Trade Data Advisory Committee.

(b) MEMBERSHIP.—The Committee shall consist of—

(1) the United States Trade Representative;

(2) the Secretary of Agriculture;

(3) the Secretary of Defense;

(4) the Secretary of Commerce;

(5) the Secretary of Labor;

(6) the Secretary of the Treasury;

(7) the Secretary of State;

(8) the Director of the Office of Management and Budget;

(9) the Director of Central Intelligence;

(10) the Chairman of the Federal Reserve Board;

(11) the Chairman of the International Trade Commission;

(12) the President of the Export-Import Bank;

(13) the President of the Overseas Private Investment Corporation; and

(14) such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

(c) CHAIRMAN.—The Secretary of Commerce shall be Chairman of the Committee.

(d) DESIGNEES.—Any member of the Committee may appoint a designee to serve in place of such member on the Committee.

SEC. 5403. FUNCTIONS OF THE COMMITTEE.

The Committee shall advise the Secretary of Commerce, as appropriate, on the establishment, structure, contents, and operation of a National Trade Data Bank in accordance with section 5406 in order to assure the timely collection of accurate data and to provide the private sector and government officials efficient access to economic and trade data collected by the Federal Government for purposes of policymaking and export promotion.

SEC. 5404. CONSULTATION WITH THE PRIVATE SECTOR AND GOVERNMENT OFFICIALS.

The Secretary shall regularly consult with representatives of the private sector and officials of State and local governments to assess the adequacy of United States trade information. The Secretary shall seek recommendations on how trade information can be made more accessible, understandable, and relevant. The Secretary shall seek recommendations as to what data should be included in the export promotion data system in the Data Bank.

SEC. 5405. COOPERATION AMONG EXECUTIVE AGENCIES.

Each executive agency shall furnish to the Secretary such information for inclusion in the National Trade Data Bank as the Secretary, in consultation with the Advisory Committee, considers necessary to the operation of the Data Bank.

SEC. 5406. ESTABLISHMENT OF THE DATA BANK.

(a) ESTABLISHMENT.—Within 2 years after the date of the enactment of this Act, the Secretary of Commerce shall establish the Data Bank. The Secretary shall manage the Data Bank. The Data Bank shall consist of two data systems, to be designated the International Economic Data System, as described in subsection (b) and the Export Promotion Data System, as described in subsection (c).

(b) INTERNATIONAL ECONOMIC DATA SYSTEM.—The International Economic Data System shall include current and historical information determined by the Secretary to be useful (after the consultation required by section 5404) to policymakers and analysts concerned with international economics and trade and which shall include data compiled or obtained by appropriate executive agencies. Such information shall not identify parties to transactions. Such information may include data for the United States and countries with which the United States has important economic relations including—

(1) data on imports and exports, including—

(A) aggregate import and export data for the United States and for each foreign country;

(B) industry-specific import and export data for each foreign country;

(C) product and service specific import and export data for the United States;

(D) market penetration information; and

(E) foreign destinations for exports of the United States;

(2) data on international service transactions;

(3) information on international capital markets, including—

(A) interest rates; and

(B) average exchange rates;

(4) information on foreign direct investment in the United States economy;

(5) international labor market information, including—

(A) wage rates for major industries;

(B) international unemployment rates; and

(C) trends in international labor productivity;

(6) information on foreign government policies affecting trade, including—

(A) trade barriers; and

(B) export financing policies;

(7) import and export data for the United States on a State-by-State basis aggregated at the product level including—

(A) data concerning the country shipping the import, the State of first destination, and the original port of entry for imports of goods and, to the extent possible, services; and

(B) data concerning the State of the exporter, the port of departure, and the country of first destination for export of goods and, to the extent possible, services; and

(8) any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this subtitle.

(c) EXPORT PROMOTION DATA SYSTEM.—The export promotion data system shall include data and information collected by the Federal Government on the industrial sectors and markets of foreign countries which are determined by the Secretary (after consultation required by section 5404) to be of the greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports, while providing for the confidentiality of proprietary business information, and shall be designed to use the most effective means of disseminating data and information electronically through the Department, or Department-designated offices, or through other available data bases in an accurate and timely manner. Such data system shall monitor, organize, and disseminate selected information on—

(1) specific business opportunities in foreign countries;

(2) specific industrial sectors within foreign countries with high export potential such as—

(A) size of the market;

(B) distribution of products;

(C) competition;

(D) significant applicable laws, regulations, specifications, and standards;

(E) appropriate government officials; and

(F) trade associations and other contact points; and

(3) foreign countries generally, such as—

(A) the general economic conditions;

(B) common business practices;

(C) significant tariff and trade barriers; and

(D) other significant laws and regulations regarding imports, licensing, and the protection of intellectual property;

(4) export financing information, including the availability, through public sources of funds for United States exporters and foreign competitors;

(5) transactions involving barter and countertrade; and

(6) any other similar information, that the Secretary determines to be useful in carrying out the purposes of this subtitle.

SEC. 5407. OPERATION OF THE DATA BANK.

The Secretary shall manage the Data Bank to provide the most appropriate data retrieval system or systems possible. Such system or systems shall—

(1) be designed to utilize data processing and retrieval technology in monitoring, organizing, analyzing, and disseminating the data and information contained in the Data Bank;

(2) use the most effective and meaningful means of organizing and making such information available to—

(A) United States Government policymakers;

(B) United States business firms;

(C) United States workers;

(D) United States industry associations;

(E) United States agricultural interests;

(F) State and local economic development agencies; and

(G) other interested United States persons who could benefit from such information; and

(3) be of such quality and timeliness and in such form as to assist coordinated trade strategies for the United States; and

(4) facilitate dissemination of information through nonprofit organizations with significant outreach programs which complement the regional outreach programs of the United States and Foreign Commercial Service.

SEC. 5408. INFORMATION ON THE SERVICE SECTOR.

(a) SERVICE SECTOR INFORMATION.—The Secretary shall ensure that, to the extent possible, there is included in the Data Bank information on service sector economic activity that is as complete and timely as information on economic activity in the merchandise sector.

(b) SURVEY.—The Secretary shall undertake a new benchmark survey of service transactions, including transactions with respect to—

(1) banking services;

(2) information services, including computer software services;

(3) brokerage services;

(4) transportation services;

(5) travel services;

(6) engineering services;

(7) construction services; and

(8) health services.

(c) GENERAL INFORMATION AND INDEX OF LEADING INDICATORS.—The Secretary shall provide—

(1) not less than once a year, comprehensive information on the service sector of the economy; and

(2) an index of leading indicators which includes the measurement of service sector activity in direct proportion to the contribution of the service sector to the gross national product of the United States.

SEC. 5409. EXCLUSION OF INFORMATION.

The Data Bank shall not include any information—

(1) the disclosure of which to the public is prohibited under any other provision of law or otherwise authorized to be withheld under other provision of law; or

(2) that is specifically authorized under criteria established by statute or an Executive order not to be disclosed in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

SEC. 5410. NONDUPLICATION.

The Secretary shall ensure that information systems created or developed pursuant to this subtitle do not unnecessarily duplicate information systems available from other Federal agencies or from the private sector.

SEC. 5411. COLLECTION OF DATA.

Except as provided in section 5408, nothing in this subtitle shall be considered to grant independent authority to the Federal Government to collect any data or information from individuals or entities outside of the Federal Government.

SEC. 5412. FEES AND ACCESS.

The Secretary shall provide reasonable public services and access (including electronic access) to any information maintained as part of the Data Bank and may charge reasonable fees consistent with section 552 of title 5, United States Code.

SEC. 5413. REPORT TO CONGRESS.

(a) INTERIM REPORT.—Not more than 1 year after the date of enactment of this Act, the Secretary after consultation with the Advisory Committee shall submit a report to the Governmental Affairs Committee and the Banking, Housing, and Urban Affairs Committee of the Senate, other appropriate committees of the Senate, and the House of Representatives describing actions taken pursuant to this subtitle, particularly—

(1) actions taken to provide the information on services described in section 5408; and

(2) actions taken to provide State-by-State information as described in section 5406(b)(7).

(b) FINAL REPORT.—Not more than 3 years after the date of enactment of this Act, the Secretary after consultation with the Advisory Committee shall submit a report to the Governmental Affairs Committee and the Banking, Housing, and Urban Affairs Committee of the Senate, other appropriate committees of the Senate, and the House of Representatives—

(1) assessing the current quality and comprehensiveness of, and the ability of the public and of private entities to obtain access to trade data;

(2) describing all other actions taken and planned to be taken pursuant to this subtitle;

(3) including comments by the private sector and by State agencies that promote exports on the implementation of the Data Bank;

(4) describing the extent to which the systems within the Data Bank are being used and any recommendations with regard to the operation of the system; and

(5) describing the extent to which United States citizens and firms have access to the data banks of foreign countries that is similar to the access provided to foreign citizens and firms.

PART II—STUDIES

SEC. 5421. COMPETITIVENESS IMPACT STATEMENTS.

(a) The President or the head of the appropriate department or agency of the Federal Government shall include in every recommendation or report made to the Congress on legislation which may affect the ability of United States firms to compete in domestic and international commerce a statement of the impact of such legislation on—

(1) the international trade and public interest of the United States, and

(2) the ability of United States' firms engaged in the manufacture, sale, distribution, or provision of goods or services to compete in foreign or domestic markets.

(b) This section provides no private right of action as to the need for or adequacy of the statement required by subsection (a).

(c) This section shall cease to be effective six years from the date of enactment.

SEC. 5422. STUDY AND REPORT BY THE ADVISORY COUNCIL ON FEDERAL PARTICIPATION IN SEMATECH.

(a) STUDY AND REPORT.—Not later than February 1, 1989, and annually thereafter for each fiscal year in which appropriated funds are expended for Sematech the Advisory Council on Federal Participation in Sematech established under section 273(a) of the National Defense Authorization Act for fiscal years 1988 and 1989 (15 U.S.C. 4603(a); Public Law 100-180) shall conduct a study and submit a report to the Governmental Affairs Committee and the Armed Services Committee of the Senate and to appropriate committees of the House of Representatives concerning Federal participation in Sematech. The study and report shall be conducted under the direction of the Under Secretary of Commerce for Economic Affairs.

(b) COUNCIL RECOMMENDATIONS AND REPORT.—The Council shall include in the report submitted under subsection (a) the following:

(1) identification of potential sources of Federal funding from department and agency budgets for Sematech and recommendations concerning methods and terms of Federal financial participation in Sematech, including grants, loans, loan guarantees, and contributions in kind. The feasibility of methods of Federal recoupment shall also be considered;

(2) definition and assessment of continued Federal participation in Sematech including, but not limited to, issues of technology research and development, civilian and defense industrial base objectives and initiatives, and commercialization. The report shall include a summary of the most recent plans, milestones, and cost estimates for Sematech, including any changes and alterations, and shall comment on Sematech's accomplishments and shortfalls in the preceding fiscal year;

(3) coordination of inter-agency participation, including all matters pertaining to Federal funding and decisionmaking, and other issues regarding Federal participation in Sematech; and

(4) any other issues and questions the Council deems appropriate shall be considered.

SEC. 5423. IMPACT OF NATIONAL DEFENSE EXPENDITURES ON INTERNATIONAL COMPETITIVENESS.

(a) FINDINGS.—The Congress finds that the ability of United States industries to compete in world markets may be adversely affected by the following factors:

(1) The allocation of intellectual resources between the private and public sectors.

(2) The distribution of innovative research and development between commercial and noncommercial applications.

(3) The number of scientific advances which are ultimately commercialized.

(4) The cost of capital which is affected by many factors including the budget deficit and defense spending.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should evaluate the impact on United States competitiveness of—

(1) the defense spending by foreign countries, particularly Japan's expenditure of 1 percent of its gross national product for defense compared to the expenditure of the United States of 6 percent of its gross national product, and

(2) the other factors listed in subsection (a).

TITLE VI—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS

SEC. 6001. SHORT TITLE.

This title may be cited as the "Education and Training for a Competitive America Act of 1988".

SEC. 6002. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the relationship between a strong and vibrant educational system and a healthy national economy is inseparable in an era in which economic growth is dependent on technology and is imperiled by increased foreign competition;

(2) our Nation's once undisputed pre-eminence in international commerce is facing unprecedented challenges from competitor nations who have given priority to the relationship between education and economic growth in areas such as high technology industries;

(3) our standing in the international marketplace is being further eroded by the presence in the workforce of millions of Americans who are functionally or technologically illiterate or who lack the mathematics, science, foreign language, or vocational skills needed to adapt to the structural changes occurring in the global economy;

(4) our competitive position is also being eroded by declines in the number of students taking advanced courses in mathematics, science, and foreign languages and by the lack of modern technical and laboratory equipment in our educational institutions;

(5) restoring our competitiveness and enhancing our productivity will require that all workers possess basic educational skills and that many others possess highly specific skills in mathematics, science, foreign languages, and vocational areas; and

(6) our Nation must recognize the substantial impact that an investment in human capital will have on increasing productivity.

(b) PURPOSE.—It is therefore the purpose of this title to establish programs designed—

(1) to enhance ongoing efforts in elementary and secondary education;

(2) to improve our productivity and competitive position by investing in human capital;

(3) to assist out-of-school youth and adults who are functionally illiterate in obtaining the basic skills needed for them to become productive workers in a competitive economy;

(4) to help educational institutions prepare those engaged in work relating to mathematics, science, and foreign languages by improving and expanding instruction in those areas and by modernizing laboratory and technical equipment;

(5) to enhance the skills of workers affected, or about to be affected, by economic change, in order to prevent dislocation within existing industries and to strengthen emerging domestic industries; and

(6) to accomplish such purposes without impairing the availability of funds to carry out existing programs that address the needs of dislocated workers, such as previously authorized education programs.

SEC. 6003. DEFINITIONS.

As used in this title—

(1) The term "foreign language instruction" means instruction in critical foreign languages as defined by the Secretary.

(2) The term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965.

(3) The terms "local educational agency" and "State educational agency" have the same meaning given such terms under section 198 of the Elementary and Secondary Education Act of 1965.

(4) The term "Secretary" means the Secretary of Education.

(5) The term "State" means any of the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

SEC. 6004. GENERAL PROVISIONS.

(a) GRANT REQUIREMENTS.—The Secretary shall ensure, with respect to grants provided under subtitles A and B, that—

(1) services assisted by funds received under such grants shall be made available to historically underrepresented and underserved populations of students, including females, minorities, handicapped individuals, individuals with limited English proficiency, and migrant students;

(2) the terms "training" and "instruction" are interpreted to include training and instruction through telecommunications technologies, including the full range of current and new technologies that can be used for educational purposes, such as television broadcasts, closed circuit television systems, cable television, satellite transmissions, computers, VHS, laser discs, and audio by discs, tapes, or broadcast, and such other video and telecommunications technologies that alone or in combination can assist in teaching and learning; and

(3) where appropriate, programs funded under subtitles A and B shall be coordinated with other federally funded education and training programs.

(b) ADDITIONAL ELIGIBLE INSTITUTIONS.—For purposes of any program authorized by subtitle A or B, institutions eligible to participate shall include any accredited proprietary institution providing a program of less than six months duration that is otherwise eligible to participate in any program under subtitle A or B.

(c) BUDGET LIMITATION.—The Secretary may not make grants or enter into contracts under subtitles A, B, or C except to such extent, or in such amounts, as may be provided in appropriation Acts.

Subtitle A—Elementary and Secondary Education

CHAPTER 1—MATHEMATICS AND SCIENCE

SEC. 6005. MATHEMATICS AND SCIENCE EDUCATION REAUTHORIZED.

Section 203(b) of the Education for Economic Security Act is amended to read as follows:

"(b) There are authorized to be appropriated $175,000,000 for the fiscal year 1988 to carry out the provisions of this title.".

CHAPTER 2—ADULT LITERACY

SEC. 6011. WORKPLACE LITERACY PARTNERSHIPS GRANTS.

(a) ESTABLISHMENT OF GRANT PROGRAM.—The Adult Education Act is amended by inserting after section 315 the following new section:

"BUSINESS, INDUSTRY, LABOR, AND EDUCATION PARTNERSHIPS FOR WORKPLACE LITERACY

"SEC. 316. (a) GRANTS FOR EXEMPLARY DEMONSTRATION PARTNERSHIPS FOR WORKPLACE LITERACY.—(1) Subject to subsection (b), the Secretary may make demonstration grants to exemplary education partnerships for workplace literacy to pay the Federal share of the cost of adult education programs which teach literacy skills needed in the workplace through partnerships between—

"(A) business, industry, or labor organizations, or private industry councils; and

"(B) State educational agencies, local educational agencies, institutions of higher education, or schools (including employment and training agencies or community-based organizations).

"(2) Grants under paragraph (1) may be used—

"(A) to fund 70 percent of the cost of programs which meet the requirements of paragraph (3); and

"(B) for administrative costs incurred by State educational agencies and local educational agencies in establishing programs funded under subparagraph (A).

"(3) Programs funded under paragraph (2)(A) shall be designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace by—

"(A) providing adult literacy and other basic skills services and activities;

"(B) providing adult secondary education services and activities which may lead to the completion of a high school diploma or its equivalent;

"(C) meeting the literacy needs of adults with limited English proficiency;

"(D) upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

"(E) improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

"(F) providing education counseling, transportation, and nonworking hours child care services to adult workers while they participate in a program funded under paragraph (2)(A).

"(4) An application to receive funding for a program out of a grant made to a partnership under this subsection shall—

"(A) be submitted jointly by—

"(i) a business, industry, or labor organization, or private industry council; and

"(ii) a State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or community-based organization);

"(B) set forth the respective roles of each member of the partnership;

"(C) contain such additional information as the Secretary may require, including evidence of the applicant's experience in providing literacy services to working adults;

"(D) describe the plan for carrying out the requirements of paragraph (3); and

"(E) provide assurances that the applicant will use the funds to supplement and not supplant funds otherwise available for the purpose of this section.

"(b) GRANTS TO STATES.—(1) Whenever in any fiscal year, appropriations under subsection (c) are equal to or exceed $50,000,000, the Secretary shall make grants to States which have State plans approved by the Secretary under section 306 to pay the Federal share of the cost of adult education programs which teach literacy skills needed in the workplace through partnerships between—

"(A) business, industry, or labor organizations, or private industry councils; and

"(B) State educational agencies, local educational agencies, institutions of higher education, or schools (including employment and training agencies or community-based organizations).

"(2) Grants under paragraph (1) may be used—

"(A) to fund 70 percent of the cost of programs which meet the requirements of paragraph (4);

"(B) for administrative costs incurred by State educational agencies and local educational agencies in establishing programs funded under subparagraph (A); and

"(C) for costs incurred by State educational agencies in obtaining evaluations described in paragraph (3)(A)(iii).

"(3) A State shall be eligible to receive its allotment under subsection (e) if it—

"(A) includes in a State plan submitted to the Secretary under section 306 a description of—

"(i) the requirements for State approval of funding of a program;

"(ii) the procedures under which applications for such funding may be submitted; and

"(iii) the method by which the State shall obtain annual third-party evaluation of student achievement in, and overall effectiveness of services provided by, all programs which receive funding out of a grant made to the State under this section; and

"(B) satisfies the requirements of section 306(a).

"(4) The program requirements set forth in subsection (a)(3), shall apply to the program authorized by this subsection.

"(5) An application to receive funding for a program from a grant made to a State under paragraph (1) shall contain the same information required in subparagraphs (A) through (E) of subsection (a)(4).

"(6) If a State is not eligible for a grant under paragraph (1) of this subsection, the Secretary shall use the State's allotment under paragraph (7) to make direct grants to applicants in that State who are qualified to teach literacy skills needed in the workplace.

"(7)(A) The Federal share of expenditures for programs in a State funded under this subsection shall be paid from a State's allotment under this paragraph.

"(B) From the sum appropriated for each fiscal year under subsection (c) for any fiscal year in which appropriations equal or exceed $50,000,000, the Secretary shall allot—

"(i) $25,000 to each of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands; and

"(ii) to each remaining State an amount which bears the same ratio to the remainder of such sum as—

"(I) the number of adults in the State who do not have a certificate of graduation from a school providing secondary education (or its equivalent) and who are not currently required to be enrolled in schools in the State, bears to

"(II) the number of such adults in all States;

except that no State shall receive less than $125,000 in any fiscal year.

"(C) At the end of each fiscal year, the portion of any State's allotment for that fiscal year which—

"(i) exceeds 10 percent of the total allotment for the State under paragraph (2) for the fiscal year; and

"(ii) remains unobligated;

shall be reallocated among the other States in the same proportion as each State's allocation for such fiscal year under paragraph (2).

"(c) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $30,000,000 for the fiscal year 1988, $31,500,000 for the fiscal year 1989, and such sums as may be necessary for the fiscal year 1990 and each succeeding fiscal year ending prior to October 1, 1993, to carry out the provisions of this section.

"(2) Amounts appropriated under this subsection shall remain available until expended.".

(b) DEFINITIONS.—Section 303 of the Adult Education Act is amended by adding at the end the following new subsections:

"(k) The term 'community-based organization' has the meaning given such term in section 4(5) of the Job Training Partnership Act (21 U.S.C. 1501 et seq.).

"(l) The term 'private industry council' means the private industry council established under section 102 of the Job Training Partnership Act (21 U.S.C. 1501 et seq.).".

SEC. 6012. ENGLISH LITERACY GRANTS.

(a) ESTABLISHMENT OF GRANT PROGRAM.—The Adult Education Act is amended by inserting after section 316 (as added by section 6011) the following new section:

"ENGLISH LITERACY PROGRAM GRANTS

"SEC. 317. (a) GRANTS TO STATES.—(1) The Secretary may make grants to States which have State plans approved by the Secretary under section 306 for the establishment, operation, and improvement of English literacy programs for individuals of limited English proficiency. Such grants may provide for support services for program participants, including child care and transportation costs.

"(2) A State shall be eligible to receive a grant under paragraph (1) if the State includes in a State plan submitted to the Secretary under section 306 a description of—

"(A) the number of individuals of limited English proficiency in the State who need or could benefit from programs assisted under this chapter;

"(B) the activities which would be undertaken under the grant and the manner in which such activities will promote English literacy and enable individuals in the State to participate fully in national life;

"(C) how the activities described in subparagraph (B) will serve individuals of limited English proficiency, including the qualifications and training of personnel who will participate in the proposed activities;

"(D) the resources necessary to develop and operate the proposed activities and the resources to be provided by the State; and

"(E) the specific goals of the proposed activities and how achievement of these goals will be measured.

"(3) The Secretary may terminate a grant only if the Secretary determines that—

"(A) the State has not made substantial progress in achieving the specific educational goals set out in the application; or

"(B) there is no longer a need in the State for the activities funded by the grant.

"(b) SET-ASIDE FOR COMMUNITY-BASED ORGANIZATIONS.—A State that is awarded a grant under subsection (a) shall use not less than 50 percent of funds awarded under the grant to fund programs operated by community-based organizations with the demonstrated capability to administer English proficiency programs.

"(c) REPORT.—A State that is awarded a grant under subsection (a) shall submit to the Secretary a report describing the activities funded under the grant for each fiscal year covered by the grant.

"(d) DEMONSTRATION PROGRAM.—The Secretary, subject to the availability of funds appropriated pursuant to this section, shall directly, and through grants and contracts with public and private nonprofit agencies, institutions, and organizations, carry out a program—

"(1) through the Adult Education Division to develop innovative approaches and methods of literacy education for individuals of limited English proficiency utilizing new instructional methods and technologies; and

"(2) to designate the Center for Applicable Linguistics of the Office of Educational Research and Improvement as a national clearinghouse on literacy education for individuals of limited English proficiency to collect and disseminate information concerning effective approaches or methods, including coordination with manpower training and other education programs.

"(e) EVALUATION AND AUDIT.—The Secretary shall evaluate the effectiveness of programs conducted under this section. Programs funded under this section shall be audited in accordance with chapter 75 of title 31, United States Code.

"(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $25,000,000 for the fiscal year 1988 to carry out this section.

"(2) Funds appropriated pursuant to this section shall remain available until expended.

"(3) Funds appropriated under this subsection may be combined with other funds made available for the State by the Federal Government for literacy training for individuals with limited English proficiency.

"(4) Not more than 10 percent of funds available under this section shall be used to carry out the purposes of subsection (d).".

(b) DEFINITIONS.—Section 303 of the Adult Education Act (20 U.S.C. 1201 et seq.) (as amended by section 6011) is amended by adding at the end the following new subsections:

"(m) The term 'individual of limited English proficiency' means an adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English language and—

"(1) whose native language is a language other than English; or

"(2) who lives in a family or community environment where a language other than English is the dominant language.

"(n) The term 'out-of-school youth' means an individual who is under 16 years of age and beyond the age of compulsory school attendance under State law who has not completed high school or the equivalent.

"(o) The term 'English literacy program' means a program of instruction designed to help limited English proficient adults, out-of-school youths, or both, achieve full competence in the English language.

"(p) The term 'community-based organization' means a private organization which is representative of a community or significant segments of a community and which provides education, vocational education, job training, or internship services and programs and includes neighborhood groups and organizations, community action agencies, community development corporations, union-related organizations, employer-related organizations, tribal governments, and organizations serving Native Alaskans and Indians.".

SEC. 6013. LITERACY COORDINATION.

(a) FEDERAL LITERACY OFFICE.—The Adult Education Act is amended by inserting after section 317 (as added by section 6012) the following new section:

"COORDINATION OF LITERACY PROGRAMS

"SEC. 318. (a) FEDERAL LITERACY COORDINATION OFFICE.—The Adult Education Division shall serve as the Federal literacy coordination office.

"(b) DUTIES.—The Secretary, through the Division, shall—

"(1) coordinate Federal literacy programs, including grant programs administered under this chapter and other grant programs funded under the Adult Education Act (20 U.S.C. 1201 et seq.); and

"(2) provide information and guidance to States with respect to the establishment of State and local volunteer programs relating to literacy.

"(c) STATE LITERACY COORDINATION.—To the extent practicable, each State agency designated under section 306(b)(2) that receives funds under section 316 or section 317 shall—

(1) designate area offices for coordination of literacy programs, distributed throughout the State so that persons in all areas of the State have access to literacy programs;

"(2) train personnel who will operate the area offices;

"(3) determine curricula and materials for literacy programs;

"(4) oversee area offices;

"(5) provide assistance to area offices;

"(6) conduct programs to recruit volunteers and participants;

"(7) coordinate the programs described in paragraph (6) with existing literacy programs; and

"(8) allocate funds to area offices."

SEC. 6014. APPLICABILITY PROVISION.

The amendments made by this chapter shall not take effect if the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 is enacted prior to the enactment of this Act.

CHAPTER 3—FOREIGN LANGUAGES

Subchapter A—Foreign Language Assistance

SEC. 6021. SHORT TITLE.

This subchapter may be cited as the "Foreign Language Assistance Act of 1988".

SEC. 6022. FINDINGS.

The Congress finds that the economic and security interests of this Nation require significant improvement in the quantity and quality of foreign language instruction offered in the Nation's elementary and secondary schools, and Federal funds should be made available to assist the purpose of this subchapter.

SEC. 6023. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—The Secretary shall make grants to State educational agencies whose applications are approved under subsection (b) to pay the Federal share of the cost of model programs, designed and operated by local educational agencies, providing for the commencement or improvement and expansion of foreign language study for students.

(b) APPLICATION.—Any State educational agency desiring to receive a grant under this subchapter shall submit an application therefor to the Secretary at such time, in such form, and containing such information

and assurances as the Secretary may require. No application may be approved by the Secretary unless the application—

(1) contains a description of model programs which—

(A) are designed by local educational agencies and are available without regard to whether students attend the schools operated by such agency and if the local educational agency determines to do so, are available to residents of the community,

(B) represents a variety of alternative and innovative approaches to foreign language instruction, and

(C) are selected on a competitive basis by the State educational agency;

(2) provides assurances that all children aged 5 through 17 who reside within the school district of the local educational agency shall be eligible to participate in any model program funded under this section (without regard to whether such children attend schools operated by such agency);

(3) provides assurances that the State will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources; and

(4) provides that the local educational agency will provide standard evaluations of the proficiency of participants at appropriate intervals in the program which are reliable and valid, and provide such evaluations to the State educational agency.

(c) FEDERAL SHARE.—(1) The Federal share for each fiscal year shall be 50 percent.

(2) The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the project.

(d) PARTICIPATION OF PRIVATE SCHOOLS.—(1) To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private elementary and secondary schools, such State or agency shall, after consultation with appropriate private school representatives, make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of this section. Expenditures for educational services and arrangements pursuant to this subsection for children in private schools shall be equal (taking into account the number of children to be served and the needs of such children) to expenditures for children enrolled in the public schools of the State or local educational agency.

(2) If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation of children from private schools as required by paragraph (1), or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children which shall be subject to the requirements of this subsection. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 557(b) of the Education Consolidation and Improvement Act of 1981.

SEC. 6024. ALLOTMENT.

(a) GENERAL RULE.—(1) From the sums appropriated to carry out this subchapter in any fiscal year, the Secretary shall reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with their respective needs.

(2) From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school age population of the State bears to the school age population of all States, except that no State shall receive less than an amount equal to one-half of 1 percent of such remainder.

(b) AVAILABILITY OF FUNDS.—The allotment of a State under subsection (a) shall be made available to the State for 2 additional years after the first fiscal year during which the State receives its allotment under this section if the Secretary determines that the funds made available to the State during the first such year were used in the manner required under the State's approved application.

SEC. 6025. DEFINITIONS.

(a) GENERAL RULE.—For the purpose of this subchapter, the term "foreign language instruction" means instruction in critical foreign languages as defined by the Secretary.

(b) SPECIAL RULE.—For the purpose of section 6024—

(1) the term "school age population" means the population aged 5 through 17; and

(2) the term "States" includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 6026. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $20,000,000 for the fiscal year 1988 to carry out this subchapter.

Subchapter B—Presidential Award For Languages

SEC. 6027. PRESIDENTIAL AWARDS.

(a) GENERAL AUTHORITY.—The President is authorized to make Presidential Awards for Teaching Excellence in Foreign Languages to elementary and secondary school teachers of foreign languages who have demonstrated outstanding teaching qualifications in the field of teaching foreign languages.

(b) SELECTION PROCEDURES.—The President is authorized to make 104 awards under subsection (a) of this section. In selecting elementary and secondary school teachers for the award authorized by this section, the President shall select at least one elementary school teacher and one secondary school teacher from each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 6028. ADMINISTRATIVE PROVISIONS.

The President shall carry out the provisions of section 6027, including the establishment of the selection procedures, after consultation with the Secretary of Education, other appropriate officials of Federal agencies, and representatives of professional foreign language teacher associations.

SEC. 6029. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated $1,000,000 for fiscal year 1988 to carry out the provisions of this subchapter.

(b) USE OF FUNDS.—Amounts appropriated pursuant to subsection (a) shall be available for making awards under section 6027, for administrative expenses, for necessary travel by teachers selected under section 6027, and for special activities related to carrying out the provisions of this subchapter.

CHAPTER 4—SCIENCE AND MATHEMATICS ELEMENTARY AND SECONDARY BUSINESS PARTNERSHIPS

SEC. 6031. PROGRAM AUTHORIZED.

(a) ESTABLISHMENT OF PROGRAM.—Title III of the Education for Economic Security Act (20 U.S.C. 3981 et seq.) is amended—

(1) by inserting after the title heading the following:

"PART A—HIGHER EDUCATION PARTNERSHIPS"; and

(2) by adding at the end the following new part:

"PART B—ELEMENTARY AND SECONDARY EDUCATION PARTNERSHIPS

"PURPOSE

"SEC. 321. It is the purpose of this part to supplement State and local resources to—

"(1) improve the quality of instruction in the fields of mathematics and science in elementary and secondary schools;

"(2) furnish additional resources and support for the acquisition of equipment, and instructional and reference materials and improvement of laboratory facilities in elementary and secondary schools; and

"(3) encourage partnerships in science and mathematics education between the business community, museums, libraries, professional mathematics and scientific associations, private nonprofit organizations, appropriate State agencies and elementary and secondary schools.

"PROGRAMS AUTHORIZED

"SEC. 322. (a) GRANTS.—The Secretary may make grants to States to pay the Federal share of the cost of the programs described in section 324.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for purposes of carrying out this chapter $20,000,000 for fiscal year 1988.

"AMENDMENT TO STATE APPLICATION

"SEC. 323. (a) APPLICATION.—A State shall be eligible to receive a grant under this part if—

"(1) the State submits to the Secretary as part of its application under section 209 such information and assurances as the Secretary may require at such time as the Secretary shall establish; and

"(2) the Secretary approves such application.

"(b) APPLICATION REQUIREMENTS.—The Secretary shall require each application to include—

"(1) a description of the State's procedures relating to the use of funds from grants received under this part, including the approval process for local applications;

"(2) an assurance that not more than 1 percent of the amount received shall be used for administrative expenses;

"(3) an assurance that the State will, to the extent possible, assist local school districts in economically depressed areas to obtain matching funds from business concerns.

"ELIGIBLE PROGRAMS

"SEC. 324. (a) IN GENERAL.—A State may use funds from grants received in any fiscal year under this part for elementary and secondary programs described in this section. The State educational agency shall administer such funds, which shall be awarded to such programs on a competitive basis.

"(b) USE OF FUNDS.—Funds from grants received under this part may be used for the following:

"(1) IMPROVEMENT OF ELEMENTARY AND SECONDARY RESOURCES.—Such funds may be used for acquisition of equipment, instructional and reference materials, and partnership in education programs designed to—

"(A) improve instruction in mathematics and science education at the elementary and secondary level;

"(B) improve laboratory facilities, classroom and library resources in elementary and secondary mathematics and science education; and

"(C) attract matching dollars and in kind contributions of equipment, learning resources or shared time from business concerns, libraries, museums, nonprofit private organizations, professional mathematics and scientific associations, and appropriate State agencies.

"(2) ADVANCED PLACEMENT PROGRAMS.—(A) Such funds may be used for advanced placement programs operated by local educational agencies that are designed to allow qualified secondary students to attend college preparatory schools, colleges, or universities on a part-time or full-time basis with respect to science and mathematics instruction.

"(B) A local educational agency that receives funds from a grant under this part for an advanced placement program described in subparagraph (A) shall allocate to such program a percentage of funds received from the State on a per student basis according to—

"(i) the number of students participating in the program; and

"(ii) the instruction time such students receive under the program.

"LOCAL APPLICATIONS

"SEC. 325. (a) ELIGIBILITY.—An applicant that desires to receive a grant under this part shall submit an application to the State educational agency, at such time, and in such manner, as the State may require. Such application may take the form of an amendment to an assessment submitted by the local educational agency under section 210, if appropriate.

"(b) REQUIREMENTS FOR APPLICATION.—The State shall require each application to include—

"(1) a description of the activities for which assistance under this part is sought;

"(2) assurances that not more than 5 percent of the amount received by the applicant in any fiscal year shall be expended on administrative expenses;

"(3) if the funds are to be used for improvement of elementary and secondary resources as described in subsection (b)(1)—

"(A) an estimate of the amount to be spent on equipment, facilities improvement, library resources, and classroom instructional material;

"(B) an estimate of the number of elementary and secondary students who will be aided by activities and expenditures under the grant;

"(C) assurances that—

"(i) except as provided in subsection (c), a minimum of 25 percent of the funds for each project will be supplied by business concerns within the community;

"(ii) no stipend shall be paid directly to employees of a profitmaking business concern;

"(iii) provision shall be made for the equitable participation in the project of children who are enrolled in private elementary and secondary schools; and

"(iv) consideration will be given to programs and activities designed to meet the needs of educationally disadvantaged and other traditionally underserved populations; and

"(4) if the funds are to be used for advanced placement programs as described in subsection (b)(2), a commitment as to the percentage of funds received from the State on a per student basis that shall be used by the local educational agency to defray costs of the advanced placement program.

"(c) WAIVER.—The State may waive or reduce the amount of matching funds required under subsection (b)(3)(C)(i) if the State determines that—

"(1) substantial need exists in the area served by the applicant for a grant under this part; and

"(2) the required amount of matching funds cannot be made available.

"(d) JOINT APPLICATIONS.—A regional consortium of applicants in 2 or more local school districts may file a joint application under subsection (a).

"SUBMISSION OF APPLICATIONS

"SEC. 326. An applicant within a State that desires to receive a grant under this chapter shall submit an application prepared in accordance with section 325 to the State educational agency for approval. Each application with respect to funds for improvement of elementary and secondary resources under section 324(b)(1) shall be submitted jointly by the local educational agency and each business concern or other party that is to participate in the activities for which assistance is sought.

"APPROVAL OF APPLICATIONS

"SEC. 327. (a) CRITERIA.—The State shall establish criteria for approval of applications under this section. Such criteria shall include—

"(1) consideration of the local district's need for, and inability to locally provide for, the activities, equipment, library and instructional materials requested;

"(2) the number and nature of elementary and secondary students who will benefit from the planned program;

"(3) the expressed level of financial and in-kind commitment from other parties to the program.

"(b) APPROVAL PROCEDURES.—The State shall adopt approval procedures designed to ensure that grants are equitably distributed among—

"(1) rural, urban, and suburban areas; and

"(2) small, medium, and large local educational agencies.

"COMPUTATION OF GRANT AMOUNTS

"SEC. 328. (a) PAYMENTS TO GRANTEES.—

"(1) PAYMENT BY STATE.—The State shall pay to the extent of amounts received by it from the Secretary under this part, to each applicant having an application approved under section 327, the Federal share of the cost of the program described in the application.

"(2) AMOUNT.—(A) Except as provided in subparagraph (B), the Federal share for each fiscal year shall be 75 percent.

"(B) In the case of an applicant that receives a waiver under section 325(c), the Federal share for each fiscal year may be as much as 100 percent.

"(3) NON-FEDERAL SHARE.—The non-Federal share of payments under this part may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

"(b) PAYMENTS TO STATES.—Except as provided in subsection (c), each State shall receive under this part the greater of—

"(1) an amount equal to its share of funds appropriated under chapter 1 of the Education Consolidation and Improvement Act; or

"(2) $225,000.

"(c) REDUCTION FOR INSUFFICIENT FUNDING.—If sums appropriated to carry out this part are not sufficient to permit the Secretary to pay in full the grants which States may receive under subsection (b), the amount of such grants shall be ratably reduced.".

(b) CONFORMING AMENDMENTS.—

(1) TITLE HEADING.—The title heading of such title is amended to read as follows:

"TITLE III—PARTNERSHIPS IN EDUCATION FOR MATHEMATICS, SCIENCE, AND ENGINEERING".

(2) REFERENCES.—Part A of such title (as redesignated by subsection (a)) is amended by striking out "title" each place such term appears and inserting in lieu thereof "part".

CHAPTER 5—EDUCATIONAL PARTNERSHIPS

SEC. 6041. SHORT TITLE.

This chapter may be cited as the "Educational Partnerships Act of 1988".

SEC. 6042. PURPOSE.

It is the purpose of this chapter to encourage the creation of alliances between public elementary and secondary schools or institutions of higher education and the private sector in order to—

(1) apply the resources of the private and nonprofit sectors of the community to the needs of the elementary and secondary schools or institutions of higher education, as the case may be, in that community designed to encourage excellence in education;

(2) encourage business to work with educationally disadvantaged students and with gifted students;

(3) apply the resources of communities for the improvement of elementary and secondary education or higher education, as the case may be; and

(4) enrich the career awareness of secondary or postsecondary school students to exposures to the private sector and their work.

SEC. 6043. PROGRAM AUTHORIZED.

(a) GRANTS TO ELIGIBLE PARTNERSHIPS.—The Secretary may make grants to eligible partnerships to pay the Federal share of the costs of the activities described in section 6144.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1988 and such sums as may be necessary for each of fiscal years 1989 through 1993 to carry out the provisions of this chapter.

SEC. 6044. AUTHORIZED ACTIVITIES.

An eligible partnership may use payments received under this chapter in any fiscal year for—

(1) model cooperative programs designed to apply the resources of the private and nonprofit sectors of the community to the elementary and secondary schools of the local educational agency or institutions of higher education in that community;

(2) projects designed to encourage business concerns and other participants in the eligible partnership, to work with educationally disadvantaged students and with gifted students in the elementary and secondary schools of local educational agencies or institutions of higher education;

(3) projects designed to apply the resources of the community to the elementary and secondary schools of the local educational agency or institutions of higher education in that community to improve the education of students in such schools;

(4) projects which are designed to address the special educational needs of gifted and talented children in the elementary and secondary schools of such agencies which are

conducted with the support of the private sector;

(5) projects designed to enrich the career awareness of secondary or postsecondary school students through exposure to officers and employees of business concerns and other agencies and organizations participating in the eligible partnership for education;

(6) projects for statewide activities designed to carry out the purpose of this chapter, including the development of model State statutes for the support of cooperative arrangements between the private sector and the elementary and secondary schools or institutions of higher education within the State;

(7) special training projects for staff designed to develop skills necessary to facilitate cooperative arrangements between the private and nonprofit sectors and the elementary and secondary schools of local educational agencies or institutions of higher education;

(8) academic internship programs, including where possible academic credit, involving activities designed to carry out the purpose of this chapter; and

(9) projects encouraging tutorial and volunteer work in the elementary and secondary schools of local education agencies or institutions of higher education by personnel assigned from business concerns and other participants in the eligible partnership.

SEC. 6045. APPLICATION.

(a) IN GENERAL.—An eligible partnership which desires to receive a grant under this chapter shall submit an application to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Each such application shall—

(1) describe the activities for which assistance under this chapter is sought;

(2) provide assurances that the eligible partnership will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources;

(3) provide assurances that the eligible partnership will take such steps as may be available to it to continue the activities for which the eligible partnership is making application after the period for which assistance is sought;

(4) provide assurances—

(A) that the educational partnership will disseminate information on the model program for which assistance is sought; and

(B) that not more than 1 percent of the grant in any fiscal year may be expended for the purpose described in subparagraph (A); and

(5) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this chapter.

(b) JOINT APPLICATION.—A consortium of eligible alliances may file a joint application under the provisions of subsection (a) of this section.

SEC. 6046. APPROVAL OF APPLICATION.

(a) IN GENERAL.—The Secretary shall approve applications in accordance with uniform criteria established by the Secretary.

(b) RESTRICTION.—The Secretary may not approve an application if the State educational agency for the State in which the institution is located, or, in the case of a consortium of institutions, in which any institution in the consortium is located, notifies the Secretary that the application is inconsistent with State plans for elementary and secondary education in the State.

SEC. 6047. COMPUTATION OF GRANT AMOUNTS.

(a) COMPUTATION.—

(1) IN GENERAL.—The Secretary shall pay to each eligible partnership having an application approved under section 6046 the Federal share of the cost of the activities described in the application.

(2) FEDERAL SHARE.—The Federal share shall be—

(A) 90 percent for the first year for which an eligible partnership receives assistance under this chapter;

(B) 75 percent for the second such year;

(C) 50 percent for the third such year; and

(D) 33⅓ percent for the fourth such year.

(3) NON-FEDERAL SHARE.—The non-Federal share of payments under this chapter may be in cash or in kind fairly evaluated, including planned equipment or services.

(b) RESTRICTION.—The total amount of funds paid under this chapter during any fiscal year to eligible partnerships in any single State may not be greater than the greater of—

(1) an amount equal to 15 percent of the funds appropriated under this chapter for that fiscal year; or

(2) $1,000,000.

SEC. 6048. EVALUATION AND DISSEMINATION.

(a) ANNUAL EVALUATION.—The Secretary shall conduct an annual evaluation of grants made under this chapter to determine—

(1) the type of activities assisted under this chapter;

(2) the impact upon the educational characteristics of the elementary and secondary schools and institutions of higher education from activities assisted under this chapter;

(3) the extent to which activities assisted under this chapter have improved or expanded the nature of support for elementary and secondary education in the community or in the State; and

(4) a list of specific activities assisted under this chapter which show promise as model programs to carry out the purpose of this chapter.

(b) DISSEMINATION OF INFORMATION.—The Secretary shall disseminate to State and local educational agencies and other participants in the eligible alliance program information relating to the activities assisted under this chapter.

SEC. 6049. DEFINITIONS.

As used in this chapter—

(1) The term "elementary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

(2) The term "eligible partnership" means—

(A) a local educational agency or an institution of higher education, or both,

(B) business concerns, community-based organizations, nonprofit private organizations, museums, libraries, educational television and radio stations, and if the State agrees to participate, appropriate State agencies.

(3) The term "institution of higher education" has the same meaning given that term by section 481(a)(1) of the Higher Education Act of 1965.

(4) The term "secondary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

CHAPTER 6—STAR SCHOOLS PROGRAM

SEC. 6051. PROGRAM AUTHORIZED.

The Education for Economic Security Act is amended by adding at the end thereof the following new title:

"TITLE IX—STAR SCHOOLS PROGRAM

"SHORT TITLE

"SEC. 901. This title may be cited as the 'Star Schools Program Assistance Act'.

"STATEMENT OF PURPOSE

"SEC. 902. It is the purpose of this title to encourage improved instruction in mathematics, science, and foreign languages as well as other subjects such as vocational education through a star schools program under which demonstration grants are made to eligible telecommunications partnerships to enable such eligible telecommunications partnerships to develop, construct, and acquire telecommunications audio and visual facilities and equipment, to develop and acquire instructional programming, and obtain technical assistance for the use of such facilities and instructional programming.

"PROGRAM AUTHORIZED

"SEC. 903. (a) GENERAL AUTHORITY.—The Secretary is authorized, in accordance with the provisions of this title, to make grants to eligible telecommunications partnerships for the Federal share of the cost of the development, construction, and acquisition of telecommunications facilities and equipment, of the development and acquisition of instructional programming, and of technical assistance.

"(b) AUTHORIZATION OF APPROPRIATIONS.—(1) There is authorized to be appropriated $100,000,000 for the period beginning October 1, 1987, and ending September 30, 1992.

"(2) No appropriation in excess of $20,000,000 may be made in fiscal year 1988, and no appropriation in excess of $37,500,000 may be made in any of the fiscal years 1989 through 1992 pursuant to paragraph (1) of this subsection.

"(3) Funds appropriated pursuant to this subsection shall remain available until expended.

"(c) LIMITATIONS.—(1)(A) A demonstration grant made to an eligible telecommunications partnership under this title may not exceed $10,000,000.

"(B) An eligible telecommunications partnership may receive a grant for a second year under this title, but in no event may such a partnership receive more than $20,000,000.

"(2) Not less than 25 percent of the funds available in any fiscal year under this Act shall be used for the cost of instructional programming.

"(3) Not less than 50 percent of the funds available in any fiscal year under this Act shall be used for the cost of facilities, equipment, teacher training or retraining, technical assistance, or programming, for local educational agencies which are eligible to receive assistance under chapter 1 of title I of this Act.

"(d) FEDERAL SHARE.—(1) The Federal share for any fiscal year shall be 75 percent.

"(2) The Secretary may reduce or waive the requirements of the non-Federal share required under paragraph (1) of this subsection upon a showing of financial hardship.

"ELIGIBLE TELECOMMUNICATIONS PARTNERSHIPS

"SEC. 904. (a) GENERAL RULE.—In order to be eligible for demonstration grants under this title, an eligible telecommunications partnership shall consist of—

"(1) a public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, except that

any such agency or corporation shall represent the interests of elementary and secondary schools which are eligible to participate in the program under chapter 1 of title I of this Act; or

"(2) a partnership which includes 3 or more of the following, and at least one of which shall be an agency described in subparagraph (A) or (B), and which will provide a telecommunications network:

"(A) a local educational agency, which has a significant number of elementary and secondary schools which are eligible for assistance under chapter 1 of title I of this Act or elementary and secondary schools operated for Indian children by the Department of the Interior eligible under section 1005(d) of this Act,

"(B) a State educational agency, or a State higher education agency,

"(C) an institution of higher education,

"(D) a teacher training center which—

"(i) provides teacher preservice and inservice training, and

"(ii) receives Federal financial assistance or has been approved by a State agency, or

"(E)(i) a public agency with experience or expertise in the planning or operation of a telecommunications network,

"(ii) a private organization with such experience, or

"(iii) a public broadcasting entity with such experience.

"(b) SPECIAL RULE.—An eligible telecommunications partnership must be organized on a statewide or multistate basis.

"APPLICATIONS

"SEC. 905. (a) APPLICATION REQUIRED.—Each eligible telecommunications partnership which desires to receive a demonstration grant under this title may submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(b) CONTENTS OF APPLICATION.—Each such application shall—

"(1) describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include—

"(A) the design, development, construction, and acquisition of State or multistate educational telecommunications networks and technology resource centers;

"(B) microwave, fiber optics, cable, and satellite transmission equipment;

"(C) reception facilities;

"(D) satellite time;

"(E) production facilities;

"(F) other telecommunications equipment capable of serving a wide geographic area;

"(G) the provision of training services to elementary and secondary school teachers (particularly teachers in schools receiving assistance under chapter 1 of title I of this Act in using the facilities and equipment for which assistance is sought; and

"(H) the development of educational programming for use on a telecommunications network;

"(2) describe, in the case of an application for assistance for instructional programming, the types of programming which will be developed to enhance instruction and training;

"(3) demonstrate that the eligible telecommunications partnership has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in mathematics, science, and foreign languages, as well as the other subjects to be offered;

"(4) describe the teacher training policies to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought;

"(5) provide assurances that the financial interest of the United States in the telecommunications facilities and equipment will be protected for the useful life of such facilities and equipment;

"(6) provide assurances that a significant portion of the facilities, equipment, technical assistance, and programming for which assistance is sought will be made available to elementary and secondary schools of local educational agencies which have a high percentage of children counted for the purpose of chapter 1 of title I of this Act;

"(7) describe the manner in which traditionally underserved students will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this Act;

"(8) provide assurances that the applicant will use the funds to supplement and not supplant funds otherwise available for the purpose of this title; and

"(9) provide such additional assurances as the Secretary may reasonably require.

"(c) APPROVAL OF APPLICATION; PRIORITY.—The Secretary shall, in approving applications under this title, give priority to applications which demonstrate that—

"(1) a concentration and quality of mathematics, science, and foreign language resources which, by their distribution through the eligible telecommunications partnership, will offer significant new educational opportunities to network participants, particularly to traditionally underserved populations and areas with scarce resources and limited access to courses in mathematics, science, and foreign languages;

"(2) the eligible telecommunications partnership has secured the direct cooperation and involvement of public and private educational institutions, State and local government, and industry in planning the network;

"(3) the eligible telecommunications partnership will serve the broadest range of institutions, including public and private elementary and secondary schools (particularly schools having significant numbers of children counted for the purpose of chapter 1 of title I of this Act, programs providing instruction outside of the school setting, institutions of higher education, teacher training centers, research institutes, and private industry;

"(4) a significant number of educational institutions have agreed to participate or will participate in the use of the telecommunications system for which assistance is sought;

"(5) the eligible telecommunications partnership will have substantial academic and teaching capabilities including the capability of training, retraining, and inservice upgrading of teaching skills;

"(6) the eligible telecommunications partnership will serve a multistate area; and

"(7) the eligible telecommunications partnership will, in providing services with assistance sought under this Act, meet the needs of groups of individuals traditionally excluded from careers in mathematics and science because of discrimination, inaccessibility, or economically disadvantaged backgrounds.

"(d) GEOGRAPHIC DISTRIBUTION.—In approving applications under this title, the Secretary shall assure an equitable geographic distribution of grants.

"DISSEMINATION OF COURSES AND MATERIALS UNDER THE STAR SCHOOLS PROGRAM

"SEC. 906. (a) REPORT.—Each eligible telecommunications partnership awarded a grant under this Act shall report to the Secretary a listing and description of available courses of instruction and materials to be offered by educational institutions and teacher training centers which will be transmitted over satellite, specifying the satellite on which such transmission will occur and the time of such transmission.

"(b) DISSEMINATION OF COURSES OF INSTRUCTION.—The Secretary shall compile and prepare for dissemination a listing and description of available courses of instruction and materials to be offered by educational institutions and teacher training centers equipped with satellite transmission capabilities, as reported to the Secretary under subsection (a) of this section.

"(c) DISSEMINATION TO STATE EDUCATIONAL AGENCIES.—The Secretary shall distribute the list required by subsection (b) of this section to all State educational agencies.

"DEFINITIONS

"SEC. 907. As used in this title—

"(1) the term 'educational institution' means an institution of higher education, a local educational agency, and a State educational agency;

"(2) the term 'institution of higher education' has the same meaning given that term under section 1201(a) of the Higher Education Act of 1965;

"(3) the term 'local educational agency' has the same meaning given that term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965;

"(4) the term 'instructional programming' means courses of instruction, and training courses, and materials for use in such instruction and training which have been prepared in audio and visual form on tape, disc, film, or live, and presented by means of telecommunications devices;

"(5) the term 'public broadcasting entity' has the same meaning given that term in section 397 of the Communications Act of 1934;

"(6) the term 'Secretary' means the Secretary of Education;

"(7) the term 'State educational agency' has the same meaning given that term under section 198(a)(17) of the Elementary and Secondary Education Act of 1965; and

"(8) the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.".

SEC. 6052. APPLICABILITY PROVISION.

The amendment made by this chapter shall not take effect if the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 is enacted prior to the enactment of this Act.

CHAPTER 7—PROJECTS AND PROGRAMS DESIGNED TO ADDRESS SCHOOL DROPOUT PROBLEMS AND TO STRENGTHEN BASIC SKILLS INSTRUCTION

Subchapter A—Assistance to Address School Dropout Problems

SEC. 6061. SHORT TITLE.

This subchapter may be cited as the "School Dropout Demonstration Assistance Act of 1988".

SEC. 6062. PURPOSE.

The purpose of this subchapter is to reduce the number of children who do not complete their elementary and secondary education by providing grants to local educational agencies to establish and demonstrate—

(1) effective programs to identify potential student dropouts and prevent them from dropping out;

(2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education;

(3) effective early intervention programs designed to identify at-risk students in elementary and secondary schools; and

(4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of the children not completing their elementary and secondary education and the reasons why such children have dropped out of school.

SEC. 6063. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subchapter $50,000,000 for the fiscal year 1988.

SEC. 6064. GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) ALLOTMENT TO CATEGORIES OF LOCAL EDUCATIONAL AGENCIES.—From the amount appropriated under section 6063 for any fiscal year, the Secretary shall allot the following percentages to each of the following categories of local educational agencies:

(1) Local educational agencies administering schools with a total enrollment of 100,000 or more elementary and secondary school students shall be allotted 25 percent of the amount appropriated.

(2) Local educational agencies administering schools with a total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students shall be allotted 40 percent of the amount appropriated.

(3) Local educational agencies administering schools with a total enrollment of less than 20,000 elementary and secondary school students shall be allotted 30 percent of the amount appropriated. Grants may be made under this paragraph to intermediate educational units and consortia of not more than 5 local educational agencies in any case in which the total enrollment of the largest such local educational agency is less than 20,000 elementary and secondary students. Such units and consortia may also apply in conjunction with the State educational agency. Not less than 20 percent of funds available under this paragraph shall be awarded to local educational agencies administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

(4) Community-based organizations shall be allotted 5 percent of the amount appropriated. Grants under this category shall be made after consultation between the community-based organization and the local educational agency that is to benefit from such a grant.

(b) SPECIAL TREATMENT OF EDUCATIONAL PARTNERSHIPS.—(1) The Secretary shall allot 25 percent of the funds available for each category described in paragraphs (1), (2), and (3) of subsection (a) of this section to educational partnerships.

(2) Educational partnerships under this subsection shall include—

(A) a local educational agency; and

(B) a business concern or business organization, or, if an appropriate business concern or business organization is not available, one of the following: any community-based organization, nonprofit private organization, institution of higher education, State educational agency, State or local public agency, private industry council (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station.

(c) AWARD OF GRANT.—From the amount allotted for any fiscal year to a category of local educational agencies under subsection (a), the Secretary shall award as many grants as practicable within each such category to local educational agencies and educational partnerships whose applications have been approved by the Secretary for such fiscal year under section 6065 and whose applications propose a program of sufficient size and scope to be of value as a demonstration. The grants shall be made under such terms and conditions as the Secretary shall prescribe consistent with the provisions of this subchapter.

(d) USE OF FUNDS WHEN NOT FULLY NEEDED FOR EDUCATIONAL PARTNERSHIPS.—(1) Whenever the Secretary determines that the full amount of the sums made available under subsection (b) in each category for educational partnerships will not be required for applications of educational partnerships, the Secretary shall make the amount not so required available to local educational agencies in the same category in which the funds are made available.

(2) In order to transfer funds under this subsection, the Secretary shall use a peer review process to determine that such excess funds are not needed to fund educational partnerships and shall prepare a list of the categories in which additional funds are available, and the reasons therefor, and make such list available to local educational agencies upon request. The Secretary may use the peer review process to determine grant recipients of funds transferred in accordance with this subsection.

(e) USE OF FUNDS WHEN NOT FULLY ALLOTTED TO CATEGORIES UNDER SUBSECTION (a).—(1) Whenever the Secretary determines that the full amount of the sums allotted under any category set forth under subsection (a) will not be required for applications of the local educational agencies in the case of categories (1) through (3), the Secretary shall make the amount not so required available to another category under subsection (a). In carrying out the provisions of this subsection, the Secretary shall assure that the transfer of amounts from one category to another is made to a category in which there is the greatest need for funds.

(2) In order to transfer funds under this subsection, the Secretary shall use a peer review process to determine that such excess funds are not needed to fund projects in particular categories and shall prepare a list of the categories in which funds were not fully expended and the reasons therefor, and make such list available to local educational agencies and educational partnerships, upon request. The Secretary may use the peer review process to determine grant recipients of funds transferred in accordance with this subsection.

(f) FEDERAL SHARE.—(1) The Federal share of a grant under this subchapter may not exceed—

(A) 90 percent of the total cost of a project for the first year for which the project receives assistance under this subchapter, and

(B) 75 percent of such cost for the second such year.

(2) The remaining cost of a project that receives assistance under this subchapter may be paid from any source other than funds made available under this subchapter, except that not more than 10 percent of the remaining cost in any fiscal year may be provided from Federal sources other than this subchapter.

(3) The share of payments from sources other than funds made available under this subchapter may be in cash or in kind fairly evaluated, including plant, equipment or services.

SEC. 6065. APPLICATION.

(a) IN GENERAL.—(1) A grant under this subchapter may be made only to a local educational agency or an educational partnership which submits an application to the Secretary containing such information as may be required by the Secretary by regulation.

(2) Applications shall be for a 1-year period.

(b) CONTENTS OF APPLICATION.—Each such application shall—

(1) provide documentation of—

(A) the number of children who were enrolled in the schools of the applicant for the 5 academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as school dropouts pursuant to section 4141(b)(5) of the Drug-Free Schools and Communities of 1986; and

(B) the percentage that such number of children is of the total school-age population in the applicant's schools;

(2) include a plan for the development and implementation of a dropout information collection and reporting system for documenting the extent and nature of the dropout problem;

(3) include a plan for coordinated activities involving at least 1 high school and its feeder junior high or middle schools and elementary schools for local educational agencies that have feeder systems;

(4) include a plan for the development and implementation of a project including activities designed to carry out the purpose of this subchapter, such as—

(A) implementing identification, prevention, outreach, or reentry projects for dropouts and potential dropouts;

(B) addressing the special needs of schoolage parents;

(C) disseminating information to students, parents, and the community related to the dropout problem;

(D) as appropriate, including coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act;

(E) involving the use of educational and telecommunications and broadcasting technologies and educational materials for dropout prevention, outreach, and reentry;

(F) providing activities which focus on developing occupational competencies which link job skill preparation and training with genuine job opportunities;

(G) establishing annual procedures for—

(i) evaluating the effectiveness of the project; and

(ii) where possible, determining the cost-effectiveness of the particular dropout prevention and reentry methods used and the potential for reproducing such methods in other areas of the country;

(H) coordinating, to the extent practicable, with other student dropout activities in the community; or

(I) using the resources of the community and parents to help develop and implement solutions to the local dropout problem; and

(5) contain such other information as the Secretary considers necessary to determine the nature of the local needs, the quality of the proposed project, and the capability of the applicant to carry out the project.

(c) PRIORITY.—The Secretary shall, in approving applications under this section, give priority to applications which both show the replication of successful programs conducted in other local educational agencies or the expansion of successful programs within a local educational agency and reflect very high numbers or very high percentages of school dropouts in the schools of the applicant in each category described in section 6064(a).

(d) SPECIAL CONSIDERATION.—The Secretary shall give additional special consideration to applications that include—

(1) provisions which emphasize early intervention services designed to identify at-risk students in elementary or early secondary schools; and

(2) provisions for significant parental involvement.

SEC. 6066. AUTHORIZED ACTIVITIES.

(a) IN GENERAL.—Grants under this subchapter shall be used to carry out plans set forth in applications approved under section 6065. In addition, grants may be used for educational, occupational, and basic skills testing services and activities, including, but not limited to—

(1) the establishment of systemwide or school-level policies, procedures, and plans for dropout prevention and school reentry;

(2) the development and implementation of activities, including extended day or summer programs, designed to address poor achievement, basic skills deficiencies, language deficiencies, or course failures, in order to assist students at risk of dropping out of school and students reentering school;

(3) the establishment or expansion of work-study, apprentice, or internship programs;

(4) the use of resources of the community, including contracting with public or private entities or community-based organizations of demonstrated performance, to provide services to the grant recipient or the target population;

(5) the evaluation and revision of program placement of students at risk;

(6) the evaluation of program effectiveness of dropout programs;

(7) the development and implementation of programs for traditionally underserved groups of students;

(8) the implementation of activities which will improve student motivation and the school learning environment;

(9) the provision of training for school staff on strategies and techniques designed to—

(A) identify children at risk of dropping out;

(B) intervene in the instructional program with support and remedial services;

(C) develop realistic expectations for student performance; and

(D) improve student-staff interactions;

(10) the study of the relationship between drugs and dropouts and between youth gangs and dropouts, and the coordination of dropout prevention and reentry programs with appropriate drug prevention and community organizations for the prevention of youth gangs;

(11) the study of the relationship between handicapping conditions and student dropouts;

(12) the study of the relationship between the dropout rate for gifted and talented students compared to the dropout rate for the general student enrollment;

(13) the use of educational telecommunications and broadcasting technologies and educational materials designed to extend, motivate, and reinforce school, community, and home dropout prevention and reentry activities; and

(14) the provision of other educational, occupational and testing services and activities which directly relate to the purpose of this subchapter.

(b) ACTIVITIES FOR EDUCATIONAL PARTNERSHIPS.—Grants under this subchapter may be used by educational partnerships for—

(1) activities which offer jobs and college admissions for successful completion of the program for which assistance is sought;

(2) internship, work study, or apprenticeship programs;

(3) summer employment programs;

(4) occupational training programs;

(5) career opportunity and skills counseling;

(6) job placement services;

(7) the development of skill employment competency testing programs;

(8) special school staff training projects; and

(9) any other activity described in subsection (a).

SEC. 6067. DISTRIBUTION OF ASSISTANCE; LIMITATION ON COSTS.

(a) DISTRIBUTION OF ASSISTANCE.—The Secretary shall ensure that, to the extent practicable, in approving grant applications under this subchapter—

(1) grants are equitably distributed on a geographic basis within each category set forth in section 6064(a);

(2) the amount of a grant to a local educational agency for a fiscal year is proportionate to the extent and severity of the local school dropout problem;

(3) not less than 30 percent of the amount available for grants in each fiscal year is used for activities relating to school dropout prevention; and

(4) not less than 30 percent of the amount available for grants in each fiscal year is used for activities relating to persuading school dropouts to return to school and assisting former school dropouts with specialized services once they return to school.

(b) ADMINISTRATIVE COSTS.—Not more than 5 percent of any grant made under this subchapter may be used for administrative costs.

Subchapter B—Assistance to Provide Basic Skills Improvement

SEC. 6071. SHORT TITLE.

This subchapter may be cited as the "Secondary Schools Basic Skills Demonstration Assistance Act of 1988".

SEC. 6072. PURPOSE.

It is the purpose of this subchapter to provide assistance to local educational agencies with high concentrations of children from low-income families to improve the achievement of educationally disadvantaged children enrolled in the secondary schools of such agencies.

SEC. 6073. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subchapter $200,000,000 for fiscal year 1988.

SEC. 6074. GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) GENERAL AUTHORITY.—From the amount appropriated under section 6073 for any fiscal year the Secretary shall make grants to local educational agencies in accordance with the provisions of this subchapter.

(b) COMMUNITY-BASED ORGANIZATIONS RULE.—Each local educational agency may carry out the activities described in section 6075 in cooperation with community-based organizations.

(c) ELIGIBLE STUDENTS.—Secondary school students who meet the requirements of part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 other than the requirement of attendance in the designated school attendance area shall be eligible to participate in programs and activities assisted under this subchapter.

SEC. 6075. AUTHORIZED ACTIVITIES.

(a) IN GENERAL.—Funds made available under this subchapter may be used—

(1) to initiate or expand programs designed to meet the special educational needs of secondary school students and to help such students attain grade level proficiency in basic skills, and, as appropriate, learn more advanced skills;

(2) to develop innovative approaches—

(A) for surmounting barriers that make secondary school programs under this subchapter difficult for certain students to attend and difficult for secondary schools to administer, such as scheduling problems; and

(B) for courses leading to successful completion of the general educational development test or of graduation requirements;

(3) to develop and implement innovative programs involving community-based organizations or the private sector, or both, to provide motivational activities, pre-employment training, or transition-to-work activities;

(4) to provide programs for eligible students outside the school, with the goal of reaching school dropouts who will not reenter the traditional school, for the purpose of providing compensatory education, basic skills education, or courses for general educational development;

(5) to use the resources of the community to assist in providing services to the target population;

(6) to provide training for staff who will work with the target population on strategies and techniques for identifying, instructing, and assisting such students;

(7) to provide guidance and counseling activities, support services, exploration of postsecondary educational opportunities, youth employment activities, and other pupil services which are necessary to assist eligible students; or

(8) to recruit, train, and supervise secondary school students (including the provision of stipends to students in greatest need of financial assistance) to serve as tutors of other students eligible for services under this subchapter and under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, in order to assist such eligible students with homework assignments, provide instructional activities, and foster good study habits and improved achievement.

(b) LIMITATION.—Not more than 25 percent of amounts available to a local educational agency under this subchapter may be used by such agency for noninstructional services such as those described in subsections (a)(3), (a)(5), and (a)(7).

SEC. 6076. APPLICATION.

(a) IN GENERAL.—(1) A grant under this subchapter may be made only to a local educational agency which submits an application to the Secretary containing or accompanied by such information as the Secretary may reasonably require.

(2) Applications shall be for a 1-year period.

(b) CONTENTS OF APPLICATION.—Each such application shall include—

(1) a description of the program goals and the manner in which funds will be used to initiate or expand services to secondary school students;

(2) a description of the activities and services which will be provided by the program (including documentation to demonstrate that the local educational agency has the qualified personnel needed to develop, administer, and implement the program under this subchapter);

(3) a list of the secondary schools within the local educational agency in which programs will be conducted and a description of the needs of the schools, in terms of achievement levels of students and poverty rates;

(4) an assurance that programs will be operated in secondary schools with the greatest need for assistance, in terms of achievement levels and poverty rates;

(5) an assurance that parents of eligible students will be involved in the development and implementation of programs under this subchapter;

(6) a statement of the methods which will be used—

(A) to ensure that the programs will serve eligible students most in need of the activities and services provided by this subchapter; and

(B) an assurance that services will be provided under this subchapter to special populations, such as individuals with limited English proficiency and individuals with handicaps;

(7) an assurance that the program will be of sufficient size, scope, and quality to offer reasonable promise of success;

(8) a description of the manner in which the agency will provide for equitable participation of private school students under provisions applicable to chapter 1 of title I of the Elementary and Secondary Education Act of 1965, relating to participation of children enrolled in private schools;

(9) a description of the methods by which the applicant will coordinate programs under this subchapter with programs for the eligible student population operated by community-based organizations, social service organizations and agencies, private sector entities, and other agencies, organizations, and institutions, and with programs conducted under the Carl D. Perkins Vocational Education Act, the Job Training Partnership Act, and other relevant Acts; and

(10) such other information as the Secretary may require to determine the nature and quality of the proposed project and the applicant's ability to carry out the project.

(c) APPROVAL OF APPLICATIONS.—(1) The Secretary shall, in approving applications under this section, give special consideration to programs that—

(A) demonstrate the greatest need for services assisted under this subchapter on their numbers or proportions of secondary school children from low-income families and numbers or proportions of low-achieving secondary school children; and

(B) offer innovative approaches to improving achievement among eligible secondary school children and offer approaches which show promise for replication and dissemination.

(2) The Secretary shall ensure that programs for which applications are approved under this section are representative of urban and rural regions in the United States.

(d) ADMINISTRATIVE COSTS.—Not more than 5 percent of any grant under this subchapter may be used for administrative costs.

Subchapter C—General Provisions

SEC. 6081. GENERAL PROVISIONS.

(a) DEFINITION OF SCHOOL DROPOUT.—The Secretary shall, not later than 60 days after the date of the enactment of this chapter, establish a standard definition of a school dropout, after consultation with pertinent organizations and groups.

(b) TIMELY AWARD OF GRANTS.—To the extent possible, for any fiscal year the Secretary shall award grants to local educational agencies and educational partnerships under this subchapter not later than June 30 preceding such fiscal year.

(c) GRANTS MUST SUPPLEMENT OTHER FUNDS.—A local educational agency receiving Federal funds under this chapter shall use such Federal funds only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources or under provisions of Federal law other than this chapter for activities described in subchapter A or subchapter B of this chapter, as the case may be.

(d) EVALUATION.—The Secretary shall evaluate programs operated with funds received under this chapter, and shall issue a report at the end of the grant period, but in no case later than January 30, 1991.

(e) COORDINATION AND DISSEMINATION.—The Secretary shall require local educational agencies receiving grants under this chapter to cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(f) AUDIT.—The Comptroller General shall have access for the purpose of audit and examination to any books, documents, papers, and records of any local educational agency or educational partnership receiving assistance under this chapter that are pertinent to the sums received and disbursed under this chapter.

(g) WITHHOLDING PAYMENTS.—Whenever the Secretary, after reasonable notice and opportunity for a hearing to any local educational agency or educational partnership, finds that the local educational agency or educational partnership has failed to comply substantially with the provisions set forth in its application approved under section 6075 or section 6076, the Secretary shall withhold payments under this chapter in accordance with section 453 of the General Education Provisions Act until the Secretary is satisfied that there is no longer any failure to comply.

SEC. 6082. DEFINITIONS.

(a) As used in this title—

(1) The term "community-based organization" means a private nonprofit organization which is representative of a community or significant segments of a community and which has a proven record of providing effective educational or related services to individuals in the community.

(2) The term "basic skills" includes reading, writing, mathematics, and computational proficiency as well as comprehension and reasoning.

CHAPTER 8—MISCELLANEOUS

SEC. 6091. DRUG-FREE SCHOOLS PROGRAM.

(a) WITHIN STATE ALLOCATIONS.—The second sentence of section 4124 of the Drug-Free Schools and Communities Act of 1986 is amended to read as follows: "From such sum, the State educational agency shall distribute funds for use among areas served by local or intermediate educational agencies or consortia on the basis of the relative enrollments in public and private, nonprofit schools within such areas.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a) of the Act shall take effect October 27, 1986.

(2) Notwithstanding paragraph (1), a State educational agency may allot fiscal year 1987 funds to local and intermediate educational agencies and consortia under section 4124(a) of the Drug-Free Schools and Communities Act of 1986 on the basis of their relative numbers of children in the school-aged population.

Subtitle B—Technology and Training

CHAPTER 1—TRANSFER OF EDUCATION AND TRAINING SOFTWARE

SEC. 6101. SHORT TITLE.

This chapter may be cited as the "Training Technology Transfer Act of 1988".

SEC. 6102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) Federal agencies, particularly the Department of Defense, have made extensive investments of public funds in the development of education and training software;

(2) much knowledge and education and training software, especially computer programs and videodisc systems, is directly transferable to the private sector or could be transferable to the private sector after conversion;

(3) the transfer of education and training software to the public and private sector could properly augment existing Federal programs for the training of new industrial workers or the retraining of workers whose jobs have been disrupted because of technological developments, foreign trade, and changes in consumer requirements; and

(4) the transfer of education and training software to the public and private sector would be especially beneficial to small business concerns which lack the resources to develop such software independently.

(b) PURPOSE.—Therefore, it is the purpose of this chapter to facilitate the transfer of education and training software from Federal agencies to the public and private sector and to State and local governments and agencies thereof, including educational systems and educational institutions, in order to support the education, training, and retraining of industrial workers, especially workers in small business concerns.

SEC. 6103. OFFICE OF TRAINING TECHNOLOGY TRANSFER.

(a) OFFICE ESTABLISHED.—There is established in the Office of Educational Research and Improvement of the Department of Education an Office of Training Technology Transfer. The Office shall be headed by a Director, who shall be appointed by the Secretary of Education. The Director shall be compensated at the rate provided for GS-16 of the General Schedule under section 5332 of title 5, United States Code.

(b) PERSONNEL.—To carry out this chapter, the Director may appoint personnel in accordance with the civil service laws, and may compensate such personnel in accordance with the General Schedule under section 5332 of title 5, United States Code.

SEC. 6104. FUNCTIONS OF THE OFFICE.

(a) CLEARINGHOUSE REQUIRED.—(1) The Director shall compile and maintain a current and comprehensive clearinghouse of all knowledge and education and training software developed or scheduled for development by or under the supervision of Federal agencies. The clearinghouse shall include, with respect to each item of education and

training software listed in the clearinghouse—

(A) a complete description of such software, including the purpose, content, intended academic level or competency level, date of development, imbedded learning and instructional strategies, and mode of presentation of such software;

(B) a description of each type of computer hardware which is compatible with such software and of any other equipment required to use such software;

(C) a specification of any patent, copyright, or proprietary interest affecting the copying, conversion, or transfer of such software; and

(D) information with respect to any conversion or transfer of such software pursuant to this chapter.

(2) In compiling the clearinghouse required by this subsection, the Director shall—

(A) consult with and utilize fully the resources of all Federal agencies engaged in the collection and dissemination of information concerning education and training software; and

(B) request the participation and cooperation of entities in the legislative and judicial branches of Government.

(b) DISSEMINATION REQUIRED.—(1) The Director shall disseminate widely and on a regular basis the clearinghouse required by subsection (a) and any revisions thereof in order to enable all potential commercial users and public interest users of education and training software to receive ample notice that Federal agencies have developed such software, or have scheduled such software for development. In carrying out the preceding sentence, the Director shall—

(A) utilize all interagency and intergovernmental communication mechanisms, including the National Center for Research in Vocational Education, the National Occupational Information Committee, State educational agencies, State occupational information coordinating committees, State job training coordinating councils, private industry councils, State economic development agencies, regional educational laboratories, and the Small Business Administration; and

(B) encourage the participation of independent private sector organizations, including organizations representing State and local educational agencies, educational institutions, technical and professional organizations, and trade associations.

(2) The Director shall develop and distribute, in conjunction with the dissemination of the clearinghouse required under subsection (a), detailed instructions and procedures for securing copies, including such rights thereto as may be required, of education and training software listed in such clearinghouse and guidelines for cooperative agreements between commercial users and public interest users under subsection (d).

(c) CONSULTATION; PUBLIC INTEREST USER.—(1) The Director shall advise, consult with, and may provide grants to any prospective public interest user of a education and training software listed in the clearinghouse required under subsection (a) and shall assist such user in securing the transfer of such software from the Federal agency which developed such software at a cost to the public interest user based upon the ability of such user to pay for such transfer. In providing such assistance, the Director shall encourage such public interest user to obtain such software by working with the Training Technology Transfer Officer of such agency. If an agency has not established procedures for the transfer of education and training software, the Director shall negotiate the transfer of such software upon application by such user.

(2) The Director, to such extent and in such amounts as provided in advance by appropriation Acts, may enter into contracts with any qualified agency having expertise in the field of education and qualified private sector business concerns for the conversion of education and training software in order to adapt such software to the requirements of a public interest user.

(d) CONSULTATION; COMMERCIAL USER.—(1) The Director shall advise and consult with any prospective commercial user of an education and training software listed in the clearinghouse required under subsection (a)(1). The Director may sell or lease such training software, including exclusive or nonexclusive rights in copyrights or patents pertaining thereto, to a commercial user for a price or fee which reflects a reasonable return to the Government.

(2) The Director may waive purchase prices or lease fees for a commercial user of training software, may negotiate reduced purchase prices or lease fees for such commercial user, or may negotiate exclusive sale or lease agreements or other terms favorable to such commercial user if such commercial user agrees to enter into a cooperative agreement with a public interest user or a group of public interest users in accordance with this section. Under the preceding sentence, the Director may not waive such prices or fees, negotiate reduced prices or fees, or negotiate exclusive agreements or favorable terms for a commercial user unless such cooperative agreement—

(A) provides for the conversion of the education and training software by the commercial user in order to meet the specific needs of the public interest user or group of public interest users;

(B) provides that such conversion will be performed without charge to the public interest user or group of users; and

(C) is acceptable to the Director.

(3) In negotiating terms for the sale or lease of education and training software pursuant to subsection (b), the Director shall give preferential consideration to cooperative agreements which—

(A) will result in enhancing the employment potential and potential earnings of the maximum number of individuals;

(B) encourage and promote multiple uses of education and training software converted pursuant to this section by users with similar education needs; and

(C) provide beneficial uses of education and training software for businesses.

(4) Any education and training software converted pursuant to subsection (b) shall be listed in the clearinghouse required by subsection (a)(1) and shall be available for transfer to any other public interest user.

(e) STUDY REQUIRED.—(1) The Director shall study the effectiveness of transfers and conversions of education and training software pursuant to this chapter, and shall analyze national needs for methods to convert education and training software which are in addition to the method provided in subsection (d)(2).

(2) The Director shall submit to the Congress a report that—

(A) describes the study and analysis conducted as required by paragraph (1); and

(B) contains recommendations of the Director concerning whether the public interest is served through the program of grants and contracts to public interest users to support conversion of education and training software.

(3) The Director shall submit the report required by subparagraph (A) before the expiration of the two-year period beginning on the date of enactment of this Act.

SEC. 6105. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—In carrying out this chapter, the Director is authorized—

(1) to promulgate such rules, regulations, procedures, and forms as may be necessary to carry out the functions of the Office, and delegate authority for the performance of any function to any officer or employee of the Office under the direction and supervision of the Director;

(2) to utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal agencies and of State, local, and private agencies and instrumentalities, with or without reimbursement therefor;

(3) to enter into agreements with other Federal agencies as may be appropriate;

(4) to accept voluntary and uncompensated services, without regard to the provisions of section 1342 of title 31, United States Code;

(5) to request such information, data, and reports from any Federal agency as the Director may from time to time require and as may be produced consistent with other law; and

(6) to use the facilities of the Office of Educational Research and Improvement.

(b) SPECIFIC DELEGATION OF CLEARINGHOUSE AND DISSEMINATION FUNCTIONS.—The Director shall enter into interagency agreements with the National Technical Information Service of the Department of Commerce to perform on a reimbursable basis the functions specified in sections 6104(a) and 6104(b) of this Act.

SEC. 6106. COORDINATION WITH FEDERAL AGENCIES.

(a) USE OF FEDERAL PROGRAMS.—In carrying out this chapter, the Director shall utilize, to the fullest possible extent, all existing Federal programs to promote the identification, conversion, and transfer of knowledge and education and training software in accordance with this chapter.

(b) EDUCATION AND TRAINING SOFTWARE TRANSFER OFFICER.—The head of each Federal agency which develops knowledge for or uses education and training software shall designate, from the officers and employees of the agency, an education and training software transfer officer. The education and training software transfer officer of an agency shall—

(1) supply information to the Office of Education Software Transfer for inclusion in the clearinghouse;

(2) receive and process inquiries and requests from prospective users of knowledge and education and training software employed by such agency;

(3) promote direct contact between prospective users of knowledge and education and training software and personnel of the agency;

(4) facilitate the prompt transfer for knowledge and education and training software to public interest users; and

(5) refer requests for education and training software from commercial users to the Office of Training Software Transfer for the negotiation of the purchase or lease of such software.

(c) COOPERATION OF FEDERAL AGENCIES.—

(1) IN GENERAL.—All Federal agencies shall cooperate with the Director in the implementation of this chapter. If the head of a Federal agency finds that such agency is unable to cooperate with the Director for reasons of national security, or for any other reason, such agency head shall report such finding to the Secretary. The Secretary shall report to the Congress by July 1 of each year all such findings received by the Secretary during the preceding 12-month period.

(2) COOPERATION WITH EXCHANGE CENTER.—The Director shall cooperate with the Federal Software Exchange Center of the National Technical Information Service to facilitate the transfer of education and training software between Federal agencies.

(3) AVAILABILITY OF FEDERAL SERVICES, EQUIPMENT, PERSONNEL, AND FACILITIES.—Upon request of the Director, the head of each Federal agency shall promptly make the services, equipment, personnel, facilities, and information of the agency (including suggestions, estimates, and statistics) available to the Office to the greatest extent practicable.

(d) EQUITY RULE.—In carrying out the purposes of this chapter, the Director shall consider special equity concerns, including psychological, physiological, sociological, and socioeconomic factors, which could prevent some persons from benefiting from new technological developments, and shall, to the extent possible, ensure that such persons benefit from software transfer activities under this chapter.

SEC. 6107. DEFINITIONS.

For the purpose of this chapter—

(1) the term "commercial user" means any individual, corporation, partnership, or other legal entity which operates for profit and which uses or intends to use the education and training software of a Federal agency;

(2) the term "community-based organizations" has the same meaning as in section 2704(5) of the Job Training Partnership Act;

(3) the term "conversion" means the process whereby education and training software is modified and revised to meet the needs of a commercial user or a public interest user;

(4) the term "Director" means the Director of the Office of Training Technology Transfer established pursuant to section 6103;

(5) the term "Federal agency" has the meaning given to the term "agency" in section 551(1) of title 5, United States Code;

(6) the term "National Occupational Information Coordinating Committee" means the National Occupational Information Coordinating Committee established under section 422(a) of the Carl D. Perkins Vocational Education Act;

(7) the term "Office" means the Office of Training Technology Transfer established pursuant to section 6103;

(8) the term "private industry council" means a private industry council established under section 102 of the Job Training Partnership Act;

(9) the term "public interest user" means—

(A) any nonprofit entity which—

(i) provides job training, vocational education or other educational services, including public school systems, vocational schools, private preparatory schools, colleges, universities, community colleges, private industry councils, community-based organizations, and State and local governments and agencies thereof; and

(ii) which uses or intends to use the education and training software of a Federal agency; or

(B) any Federal agency which uses or intends to use the education and training software of another Federal agency;

(10) the term "small business concern" has the same meaning as in section 3 of the Small Business Act;

(11) the term "State job training coordinating council" means a State job training coordinating council established under section 122 of the Job Training Partnership Act;

(12) the term "State occupational information coordinating committee" means a State occupational information coordinating committee established under section 422(b) of the Carl D. Perkins Vocational Education Act;

(13) the term "education and training software" means computer software which is developed by a Federal agency to educate and train employees of the agency and which may be transferred to or converted for use by a public interest user or a commercial user and includes software for computer based instructional systems, interactive video disc systems, microcomputer education devices, audiovisual devices, and programmed learning kits, and associated manuals and devices if such manuals and devices are integrally related to a software program;

(14) the term "transfer" means the process whereby education and training software is made available to a commercial user or a public interest user for the training of the employees of such user, with or without the conversion of such software.

CHAPTER 2—INSTRUCTIONAL PROGRAMS IN TECHNOLOGY EDUCATION

SEC. 6111. PURPOSE.

It is the purpose of this chapter to assist educational agencies and institutions in developing a technologically literate population through instructional programs in technology education.

SEC. 6112. TECHNOLOGY EDUCATION DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—Subject to the availability of funds for purposes of this chapter, the Secretary of Education shall establish a program of grants to local educational agencies, State educational agencies, consortia of public and private agencies, organizations and institutions, and institutions of higher education to establish not more than 10 demonstration programs in technology education for secondary schools, vocational educational centers and community colleges.

(b) USES OF GRANT FUNDS.—(1)(A) Funds made available under this chapter may be used to develop a model demonstration program for technology education which, to the extent practicable, address the components described in paragraphs (2) through (12).

(B) To the extent feasible, the Secretary shall give priority under subparagraph (A) to model demonstration programs which address the largest number of components described in paragraphs (2) through (12).

(2) Educational course content based on—

(A) an organized set of concepts, processes, and systems that is uniquely technological and relevant to the changing needs of the workplace; and

(B) fundamental knowledge about the development of technology and its effect on people, the environment, and culture.

(3) Instructional content drawn from introduction to technology education courses in 1 or more of the following areas—

(A) communication—efficiently using resources to transfer information to extend human potential;

(B) construction—efficiently using resources to build structures on a site;

(C) manufacturing—efficiently using resources to extract and convert raw or recycled materials into industrial and consumer goods; and

(D) transportation—efficiently using resources to obtain time and place utility and to attain and maintain direct physical contact and exchange among individuals and societal units through the movement of materials, goods, and people.

(4) Assisting students in developing insight, understanding, and application of technological concepts, processes, and systems.

(5) Educating students in the safe and efficient use of tools, materials, machines, processes, and technical concepts.

(6) Developing student skills, creative abilities, confidence, and individual potential in using technology.

(7) Developing student problem solving and decisionmaking abilities involving technological systems.

(8) Preparing students for lifelong learning in a technological society.

(9) Activity oriented laboratory instruction which reinforces abstract concepts with concrete experiences.

(10) An institute for the purpose of developing teacher capability in the area of technology education.

(11) Research and development of curriculum materials for use in technology education programs.

(12) Multidisciplinary teacher workshops for the interfacing of mathematics, science, and technology education.

(13) Optional employment of a curriculum specialist to provide technical assistance for the program.

(14) Stressing basic remedial skills in conjunction with training and automation literacy, robotics, computer-aided design, and other areas of computer-integrated manufacturing technology.

(15) A combined emphasis on "know-how" and "ability-to-do" in carrying out technological work.

(c) LIMITATION ON FEDERAL ASSISTANCE.—Federal assistance to any program or project under this chapter shall not exceed 65 percent of the cost of such program in any fiscal year. Not less than 10 percent of the cost of such program shall be in the form of private sector contributions. Non-Federal contributions may be in cash or in kind, fairly evaluated, including facilities, overhead, personnel, and equipment.

SEC. 6113. APPLICATIONS FOR GRANTS.

(a) IN GENERAL.—A local educational agency, a State educational agency, a consortium of public and private agencies, organizations, and institutions, or an institution of higher education which desires to receive a grant under this chapter shall submit an application to the Secretary. Applications shall be submitted at such time, in such form, and containing such information as the Secretary shall prescribe.

(b) CONTENTS OF APPLICATION.—An application shall include—

(1) a description of a demonstration program designed to carry out the purpose described in section 6111;

(2) an estimate of the cost for the establishment and operation of the program;

(3) a description of policies and procedures for the program that will ensure adequate evaluation of the activities intended to be carried out under the application;

(4) assurances that Federal funds made available under this chapter will be so used as to supplement and, to the extent practicable, increase the amount of State and local funds that would be in the absence of such Federal funds be made available for the uses specified in this chapter, and in no case supplant such State or local funds;

(5) a provision for making such reports, in such form and containing such information, as the Secretary may require; and

(6) a description of the manner in which programs under this chapter will be coordinated, to the extent practicable, with programs under the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, and other Acts related to the purposes of this chapter.

(c) GEOGRAPHIC DISTRIBUTION.—In making grants under this chapter, the Secretary shall consider the equitable geographic distribution of such grants.

SEC. 6114. NATIONAL DISSEMINATION OF INFORMATION.

The Secretary shall disseminate the results of the programs and projects assisted under this chapter in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators.

SEC. 6115. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $2,000,000 for fiscal year 1988 and such sums as may be necessary for each of fiscal years 1989 through 1993 to carry out the provisions of this chapter.

SEC. 6116. DEFINITIONS.

As used in this chapter, the term "technology education" means a comprehensive educational process designed to develop a population that is knowledgeable about technology, its evolution, systems, techniques, utilization in industry and other fields, and social and cultural significance.

CHAPTER 3—REPLICATION OF TECHNICAL EDUCATION PROGRAMS

SEC. 6121. REPLICATION MODELS FOR TECHNICAL EDUCATION PROGRAMS DESIGNED TO IMPROVE THE QUALITY OF EDUCATION FOR AMERICA'S TECHNICALLY TRAINED WORKFORCE.

(a) IN GENERAL.—The Secretary, through the National Diffusion Network established under section 583(c) of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3851), in addition to its duties under such Act—

(1) shall gather, organize, and disseminate information on innovative programs at institutions of postsecondary education and secondary schools designed to—

(A) enhance the development of technical skills needed to improve the competitiveness of American industry;

(B) encourage the development of higher skills among individuals facing or likely to face job dislocation;

(C) encourage the acquisition of basic literacy skills among youth as well as adults; or

(D) involve the business community in the planning and offering of employment opportunities to the trained workforce;

(2) shall gather, organize, and disseminate information on consultative and collaborative efforts by elementary education, secondary education, postsecondary education, business, labor, local, State and Federal governments designed to—

(A) improve the efficiency, productivity, and competitiveness of American business; or

(B) enhance the international competitiveness of American business (such as international trade education and foreign language training for business);

(3) in carrying out the activities described in paragraphs (1) and (2), shall produce a catalog of exemplary consultative and collaborative efforts which have the highest probability of being replicated; and

(4) may provide technical assistance to any institution or entity to facilitate the gathering of information for replication models.

(b) CONFORMING RULE.—Any program of replication shall conform to the provisions of subsection (a) if such program—

(1) is being conducted by the National Diffusion Network on the date of the enactment of this chapter; and

(2) has the same purpose as the programs described in such subsection.

CHAPTER 4—VOCATIONAL EDUCATION PROGRAMS

SEC. 6131. ADULT TRAINING, RETRAINING, AND EMPLOYMENT DEVELOPMENT.

(a) IN GENERAL.—Part C of title III of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2371 et seq.) is amended—

(1) by inserting after the part heading the following:

"Subpart 1—Basic Program";

(2) by striking out "this part" each place such term appears in sections 321 through 324 and inserting in lieu thereof "this subpart"; and

(3) by adding at the end the following new subpart:

"Subpart 2—Special Program

"FINDINGS AND PURPOSE

"SEC. 326. (a) FINDINGS.—The Congress finds that—

"(1) technological change, international competition, and the demographics of the Nation's workforce have resulted in increases in the numbers of experienced adult workers who are unemployed, who have been dislocated, or who require training, retraining, or upgrading of skills,

"(2) the individuals who are entering and reentering the labor market are less educated, trained, or skilled and are disproportionately employed in low-wage occupations and require additional training, and

"(3) these needs can be met by education and training programs, especially vocational programs, that are responsive to the needs of individuals and the demands of the labor market.

"(b) PURPOSE.—It is the purpose of this part to (1) provide financial assistance to States to enable them to expand and improve vocational education programs designed to meet current needs for training, retraining, and employment development of adults who have completed or left high school and are preparing to enter or have entered the labor market, including workers who are 55 years of age and older, in order to equip adults with the competencies and skills required for productive employment, and (2) to ensure that programs are available which are relevant to the labor market needs and accessible to all segments of the population.

"AUTHORIZATION OF GRANTS AND USES OF FUNDS

"SEC. 327. (a) GRANTS TO STATES.—The Secretary shall make grants in proportion to the amount received under section 101 to States for programs, services, and activities authorized by this part.

"(b) STATE ADMINISTRATION.—(1) Grants to States under this part shall be made to the board established under section 111 to serve as the grant recipient and catalyst to public-private training partnerships.

"(2)(A) Such board shall make awards on the basis of application from educational institutions (e.g. community colleges, vocational schools, service providers under the Job Training Partnership Act (29 U.S.C. 49 et seq.), four-year colleges, universities, and community based organizations) which link up with one or more private companies in order to train people for jobs in high growth fields.

"(B) The board shall establish criteria for application, application content and criteria, and procedures for the awarding of grants under this section.

"(3) Business must be actively involved in the planning, designing, operating, and monitoring of the education and training programs so that they will meet their needs.

"(4) Training can include entry level training, employee upgrading, retraining, and customized training.

"(5) Grants shall not be awarded for more than 50 percent of the costs. The remainder must come from the private sector in either cash or related equipment and services which would be at least equivalent to the Federal grant portion.

"(c) ELIGIBLE PROGRAMS.—Programs eligible for funding by the State, and designed cooperatively between education institutions and one or more businesses, may include—

"(1) institutional and worksite programs tailored to meet the needs of an industry or group of industries for skilled workers, technicians or managers, or to assist their existing workforce to adjust to changes in technology or work requirements;

"(2) quick-start, customized training for workers in new and expanding industries, or for workers for placement in jobs that are difficult to fill because of a shortage of workers with the requisite skills;

"(3) shared programs between educational institutions and businesses, where a work experience is provided by the business subsequent to the classroom training to reinforce the classroom or workshop training;

"(4) cooperative education programs with public and private sector employers and economic development agencies, including seminars in institutional or worksite settings, designed to improve management and increase productivity;

"(5) entrepreneurship training programs which assist individuals in the establishment, management, and operation of small business enterprises;

"(6) recruitment, job search assistance, counseling, remedial services, and information and outreach programs designed to encourage and assist males and females to take advantage of vocational education programs and services, with particular attention to reaching women, older workers, individuals with limited English proficiency, the handicapped, and the disadvantaged; and

"(7) related instruction for apprentices in apprenticeship training programs.

"(d) REQUIREMENTS.—In making grants under this part, the Secretary shall require each State, in its State plan (or an amendment to such plan), to assure that programs—

"(1) are designed with the active participation of the State council established pursuant to section 112;

"(2) make maximum effective use of existing institutions, are planned to avoid duplication of programs or institutional capabilities, and to the fullest extent practicable are designed to strengthen institutional ca-

pacity to meet the education and training needs addressed by this part;

"(3) assure the active participation by public and private sector employers and public and private agencies working with programs of employment and training and economic development; and

"(4) where appropriate, involve coordination with programs under the Rehabilitation Act of 1973 and the Education of the Handicapped Act.

"COORDINATION WITH THE JOB TRAINING PARTNERSHIP ACT

"SEC. 328. (a) REQUIREMENTS FOR INCLUSION IN STATE PLAN.—Each State receiving grants under this part shall include in the State plan methods and procedures for coordinating vocational education programs, services, and activities funded under this part to provide programs of assistance for dislocated workers funded under title III of the Job Training Partnership Act.

"(b) CONSULTATION WITH STATE JOB TRAINING COORDINATING COUNCIL.—(1) The State board shall consult with the State job training coordinating council (established under section 122 of the Job Training Partnership Act) in order that programs assisted under this part may be taken into account by such council in formulating recommendations to the Governor for the Governor's coordination and special services plan required by section 121 of such Act.

"(2) The State board shall also adopt such procedures as it considers necessary to encourage coordination between eligible recipients receiving funds under this part and the appropriate administrative entity established under the Job Training Partnership Act in the conduct of their respective programs, in order to achieve the most effective use of all Federal funds through programs that complement and supplement each other, and, to the extent feasible, provide an ongoing and integrated program of training and services for workers in need of such assistance.".

(2) The table of contents at the beginning of such Act is amended—

(1) by inserting after the item relating to part C the following:

"Subpart 1—Basic Program"; and

(2) by inserting after the item relating to section 323 the following:

"Subpart 2—Special Program

"Sec. 326. Findings and purpose.
"Sec. 327. Authorization of grants and uses of funds.
"Sec. 328. Coordination with the Job Training Partnership Act.".

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) Subparagraph (A) of section 3(b)(3) of the Carl D. Perkins Vocational Education Act is amended to read as follows:

"(3)(A)(i) There are authorized to be appropriated $35,000 for the fiscal year 1985, such sums as may be necessary for each of the fiscal years 1986 and 1987, and $25,000,000 for each of the fiscal years 1988 and 1989 to carry out subpart 1 of part C of title III, relating to the basic program for adult training, retraining, and employment development.

"(ii) There are authorized to be appropriated $25,000,000 for each of the fiscal years 1988 and 1989 to carry out subpart 2 of such part, relating to the special program for adult training, retraining, and employment development.".

(2) Subparagraph (B) of such section is amended by striking out "subparagraph (A)" and inserting in lieu thereof "subparagraph (A)(i)".

SEC. 6132. AUTHORIZATION OF ADDITIONAL USES OF VOCATIONAL EDUCATION FUNDS.

Section 251(a) of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2341) is amended—

(1) by striking out "and" at the end of paragraph (23);

(2) by striking out the period at the end of paragraph (24) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraphs:

"(25) pre-employment skills training; and

"(26) school-to-work transition programs.".

SEC. 6133. EDUCATION FOR EMPLOYMENT DEMONSTRATION PROGRAM.

From the sums available to the Secretary for national programs under the Carl D. Perkins Vocational Education Act, the Secretary shall conduct a demonstration program with secondary school students designed to provide participating students with the skills needed for employment or further education by forming partnerships with business and industry for purpose of incorporating into school curriculums—

(1) practical applications of academic subjects;

(2) career exploration;

(3) instruction relating to job seeking skills, career choices, and use of information relating to the labor market; and

(4) a school monitored work experience program, designed to equip each high school graduate with a resume as well as a diploma.

SEC. 6134. INDUSTRY-EDUCATION PARTNERSHIP AUTHORIZATION.

(a) PROGRAM AUTHORIZED.—Section 343 of the Carl D. Perkins Vocational Education Act is amended by adding at the end thereof the following new subsection:

"(d)(1) Funds made available pursuant to section 3(b)(5)(B) of this Act may be used, in accordance with this part, to provide vocational education to individuals in order to assist their entry into, or advancement in, high technology occupations or to meet the technological needs of other industries or businesses.

"(2) Special consideration shall be given to individuals described in paragraph (1) who have attained 55 years of age.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 3(b)(5) of such Act is amended—

(1) by inserting "(A)" after the paragraph designation; and

(2) by adding at the end thereof the following new subparagraph:

"(B) There are authorized to be appropriated an additional $10,000,000 for each of the fiscal years 1988 and 1989 to carry out part E of title III, for workers described in section 343(d).

SEC. 6135. DEMONSTRATION PROGRAM FOR TECHNOLOGICAL LITERACY.

(a) ESTABLISHMENT.—The Secretary shall establish demonstration programs in vocational training centers and community colleges for purposes of providing modular training in basic skills with the objective of rendering participants technologically literate. Such programs shall—

(1) stress techniques and methods that offer basic remedial skills in conjunction with training in automation literacy, robotics, computer-aided design, and other areas of computer-integrated manufacturing technology; and

(2) be designed to foster flexibility and assist workers in meeting the challenge of a changing workplace.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for fiscal year 1988 for purposes of carrying out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

CHAPTER 5—ACCESS DEMONSTRATION PROGRAMS

SEC. 6141. PURPOSE.

It is the purpose of this chapter to support training programs for secondary school personnel, including guidance counselors, in order to increase the opportunities of secondary school students in rural sections of the Nation for continued education.

SEC. 6142. PROGRAM AUTHORIZED.

(a) GRANTS TO ELIGIBLE ENTITIES.—The Secretary may make grants to institutions of higher education, private nonprofit agencies and organizations, including regional educational laboratories, public agencies, State educational agencies, or combinations thereof within particular regions of the United States to support the development of training programs for secondary school personnel, including guidance counselors. The Secretary may not make a grant under the preceding sentence to any nonpublic agency unless such agency has extensive experience in providing educational assistance to State and local educational agencies.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for fiscal year 1988 for purposes of carrying out this chapter.

SEC. 6143. APPLICATIONS.

(a) SUBMISSION OF APPLICATIONS.—An eligible entity which desires to develop and operate a program described in section 6142(a) shall submit an application to the Secretary.

(b) REVIEW OF APPLICATIONS.—Each application submitted under subsection (a) shall be reviewed by peers, including educators and researchers, to determine the quality of the proposed program and its relationship to the demonstrated needs of the region to be served.

(c) SOLICITATION OF ALTERNATIVE PROPOSALS.—If, based upon a review under subsection (b), the Secretary determines that a proposed program would not best serve the needs of the students of the region to be served, the Secretary may solicit proposals from other eligible entities located in the region.

(d) CONTENT OF APPLICATIONS.—Each application for assistance under this section shall—

(1) contain assurances that—

(A) the eligible entity shall provide technical assistance to appropriate educational agencies; and

(B) information developed as a result of the applicant's research and development activities, including new educational methods, practices, techniques, and products, will be appropriately disseminated;

(C) all rural students in all States within the region will have access to and information about the access program;

(2) contain a description of—

(A) the rural secondary school population within the region served by the eligible entity, including estimates of the number of high school graduates who—

(i) attend institutions of higher education, including an estimate of the number who attend out-of-state institutions;

(ii) attend trade schools;

(iii) enter military service;

(B) services available within each of the States in the region that exist to provide secondary school students with information

and training relating to higher education and self-employment; and

(C) activities provided—

(i) to train designated school personnel to advise and establish community partnership programs; and

(ii) to provide technical assistance; and

(3) demonstrate that—

(A) the eligible entity has engaged in sufficient study and analysis to ensure that the services to be offered by the proposed program will increase the number of secondary school students entering institutions of higher education and increase their awareness of and opportunities for financial assistance;

(B) In the case of an eligible entity other than a State educational agency or local educational agency, State and local educational agencies were involved in planning the proposed programs and that services available from such agencies are incorporated into the proposed program; and

(C) the program will probably be funded by State or other sources after the expiration of funding under this chapter.

(e) REPORT.—

(1) PROGRAM EFFECT.—The Office of Educational Research and Improvement shall submit a report to the Congress on the effect of programs funded under this chapter, including recommendations of the eligible entities.

(2) The report required by paragraph (1) shall be submitted not later than November 30, 1989.

SEC. 6144. DEFINITIONS.

As used in this chapter:

(1) The term "regional educational laboratory" means a regional educational laboratory supported by the Secretary under section 405(d)(4)(A)(i) of the General Education Provisions Act (20 U.S.C. 1221e(d)(4)(A)(i)).

(2) The term "eligible entity" means any entity or combination of entities described in section 6142(a).

Subtitle C—Higher Education

CHAPTER 1—STUDENT LITERACY CORPS

SEC. 6201. STUDENT LITERACY CORPS.

Title I of the Higher Education Act of 1965 is amended by adding the following new part at the end thereof:

"PART D—STUDENT LITERACY CORPS

"SEC. 141. PURPOSE.

"It is the purpose of this part to provide financial assistance to institutions of higher education to promote the development of literacy corps programs to be operated by institutions of higher education in public community agencies in the communities in which such institutions are located.

"SEC. 142. LITERACY CORPS PROGRAM.

"From the amount appropriated pursuant to section 146 for any fiscal year, the Secretary is authorized, in accordance with the provisions of this part, to make grants to institutions of higher education for not to exceed 2 years to carry out literacy corps programs.

"SEC. 143. USES OF FUNDS.

"(a) IN GENERAL.—Funds made available under this part may be used for—

"(1) grants to institutions of higher education for—

"(A) the costs of participation of institutions of higher education in the literacy corps program for which assistance is sought; and

"(B) stipends for student coordinators engaged in the literacy corps program for which assistance is sought; and

"(2) technical assistance, collection and dissemination of information, and evaluation in accordance with section 145.

"(b) LIMITATIONS.—(1) No grant under this part to an institution of higher education may exceed $50,000.

"(2) No institution of higher education may expend more than $25,000 of a grant made under this part in the first year in which the institution receives such a grant.

"SEC. 144. APPLICATIONS.

"(a) APPLICATION REQUIRED.—Each institution of higher education desiring to receive a grant under this part shall submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(b) CONTENTS OF APPLICATION.—Each such application shall—

"(1) contain assurances that the institution will use the grant in accordance with section 143;

"(2) contain adequate assurances that—

"(A) the institution has established 1 or more courses of instruction for academic credit which are designed to combine the training of undergraduate students in various academic departments such as social sciences, economics, and education with experience as tutors,

"(B) such individuals will be required, as a condition of receiving credit in such course, to perform not less than 6 hours of voluntary, uncompensated service each week of the academic term in a public community agency as a tutor in such agency's educational or literacy program;

"(C) such tutoring service will be supplementary to the existing instructional services, offered in a structured classroom setting, and furnished under the supervision of qualified personnel; and

"(D) the institution will locate such tutoring services in one or more public community agencies which serve educationally or economically disadvantaged individuals; and

"(3) demonstrate that the institution of higher education has participated, prior to applying for a grant under this subtitle, in community service activities, including—

"(A) the use of a portion of its allotment under part C of title IV of the Higher Education Act of 1965 for work study for community service learning under section 443(b)(2)(A); or

"(B) the conduct of a cooperative education program; and

"(4) contain such other assurances as the Secretary may reasonably require.

"(c) WAIVER.—The Secretary may, upon request of an institution of higher education which does not meet the requirements of clause (3) of subsection (b), grant a waiver of the requirement under such clause if the institution of higher education provides assurances that—

"(1)(A) the institution of higher education has conducted another significant program which involves community outreach and service; or

"(B) its failure to engage in community service related programs or activities prior to making application under this part will not impede the ability of the institution to engage in the outreach efforts necessary to carry out the requirements of this part; and

"(2) the institution will use a portion of its allotment under part C of title IV of the Higher Education Act of 1965 for community service learning programs pursuant to section 443(b)(2)(A) of that Act if the institution receives an allotment under such part C.

An institution of higher education may apply for a waiver as part of the application described in subsection (b).

"SEC. 145. TECHNICAL ASSISTANCE AND COORDINATION CONTRACT.

"To the extent that funds are available therefor pursuant to section 146, the Secretary may, directly or by way of grant, contract, or other arrangement—

"(1) provide technical assistance to grant recipients under this part;

"(2) collect and disseminate information with respect to programs assisted under this part; and

"(3) evaluate such programs and issue reports on the results of such evaluations.

"SEC. 146. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out the provisions of this part $10,000,000 for fiscal year 1988, and $10,000,000 for each succeeding fiscal year thereafter ending prior to October 1, 1991, except that no funds are authorized to be appropriated for this part for more than 2 fiscal years.

"SEC. 147. DEFINITIONS.

"For the purpose of this part—

"(1) the term 'public community agency' means an established community agency with an established program of instruction such as elementary and secondary schools, Head Start centers, prisons, agencies serving youth, and agencies serving the handicapped, including disabled veterans;

"(2) the term 'institution of higher education' has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965; and

"(3) the term 'Secretary' means the Secretary of Education.".

CHAPTER 2—SPECIAL RESEARCH FACILITIES

SEC. 6211. AGRICULTURE, STRATEGIC METALS, MINERALS, FORESTRY, AND OCEANS COLLEGE AND UNIVERSITY RESEARCH FACILITIES AND INSTRUMENTATION MODERNIZATION PROGRAM.

Title VII of the Higher Education Act of 1965 is amended by adding new part J:

"PART J—AGRICULTURE, STRATEGIC METALS, MINERALS, FORESTRY, AND OCEANS COLLEGE AND UNIVERSITY RESEARCH FACILITIES AND INSTRUMENTATION MODERNIZATION PROGRAM

"PROGRAM AUTHORITY

"SEC. 795. (a) PURPOSE.—It is the purpose of this section to help revitalize college and university academic research programs that specialize in agricultural, strategic metals and minerals, energy, forestry and wood products, and oceanic research by assisting colleges and universities in repair and renovation of their research laboratories and other research facilities and upgrading or replacing outmoded research equipment and instrumentation currently in use at such facilities for agricultural, strategic metals, minerals, energy, forestry, and oceans research.

"(b) FINANCIAL ASSISTANCE AUTHORIZED.—The Secretary shall, from the sums available to carry out this section in any fiscal year, establish and carry out a new College and University Research Facilities and Instrumentation Modernization Program for agriculture, strategic metals, minerals, energy, forestry, and oceanic research that will provide assistance for the replacement, repair, or renovation of such institutions' obsolete laboratories, other research facilities, and outmoded equipment and instrumentation. No funds made available under this section

may be used for the construction of new facilities.

"(c) PROGRAM REQUIREMENTS.—The College and University Research Facilities and Instrumentation Modernization Program for agriculture, strategic metals, minerals, energy, forestry, and oceans shall be carried out through projects which involve the replacement, repair, or renovation of specific research facilities and research equipment or instrumentation at colleges and universities. Funds shall be awarded competitively, on the basis of specific proposals submitted by colleges and universities, in accordance with regulations prescribed by the Secretary. The Secretary shall consult with the Secretaries of Agriculture, Interior, Energy, and Commerce and shall obtain their recommendations regarding final proposal funding should they wish to provide such. In no case should this language be construed as granting these Secretaries final authority over funding or the right to hold up funding of acceptable projects.

"(d) MATCHING REQUIREMENTS.—Any participating college or university must provide an amount not exceeding 50 percent of the costs involved from other non-Federal public or private sources.

"(e) SELECTION CRITERIA.—The criteria for making an award to any college or university under this part, shall include—

"(1) the quality of the research and training to be carried out in the facility or facilities involved;

"(2) the congruence of the institution's research activities to be supported with funds awarded under this part with the future research needs of the Nation, especially as they relate to improving the Nation's trade and competitiveness position;

"(3) the contribution which the project will make toward meeting national, regional, and State research and related training needs, especially as those needs are related to improving the Nation's trade and competitiveness position; and

"(4) an analysis of the age and condition of existing research facilities and equipment.

"(f) SET-ASIDE.—At least 20 percent of the amount available under this section in any fiscal year shall be available only for awards to colleges and universities that received less than $10,000,000 in total Federal obligations for research and development (including obligations for the university research laboratory modernization program) in each of the two preceding fiscal years.

"(g) CONSULTATIONS FOR RULEMAKING.—In prescribing regulations and conducting the program under this section, the Secretary shall consult with other agencies of the Federal Government concerned with research, including the Departments of Energy, Agriculture, Interior, and Commerce.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1988 and such sums as may be necessary for each of the 3 succeeding fiscal years to carry out this section.".

CHAPTER 3—MINORITY SCIENCE AND ENGINEERING IMPROVEMENT

SEC. 6221. MINORITY SCIENCE AND ENGINEERING IMPROVEMENT.

Section 1047 of title X of the Higher Education Act of 1965 is amended by adding at the end thereof the following:

"(c) ADDITIONAL AUTHORIZATION.—In addition, there are authorized to be appropriated $7,500,000 for fiscal year 1988 and such sums as may be necessary for each of the 3 succeeding fiscal years for the purpose of funding new activities, consistent with the purposes of sections 1021 and 1031, which are specifically aimed at increasing the participation of minority students in scientific and engineering research careers.".

CHAPTER 4—TECHNOLOGY TRANSFER CENTERS

SEC. 6231. TECHNOLOGY TRANSFER CENTERS.

Title XII of the Higher Education Act of 1965 is amended by adding at the end thereof the following:

"TECHNOLOGY TRANSFER CENTERS

"SEC. 1211. (a)(1)(A) Except as provided in subparagraph (B), there are authorized to be appropriated $15,000,000 for fiscal year 1988 and such sums as may be necessary for each of the 3 succeeding fiscal years to develop, construct, and operate regional technology transfer centers. The Secretary shall establish such regional centers—

"(i) to promote the study and development of programs and depositories necessary to further the transfer of technology relevant to a respective region's economy;

"(ii) to assist in developing incubator facilities to encourage new economic initiatives;

"(iii) to provide technical assistance linking university expertise and private sector resources to solve technical, marketing, and manufacturing problems associated with technology-transfer and start-up businesses; and

"(iv) to ensure consideration of the economic development needs of rural as well as urban areas within the region.

"(B) The Secretary shall reserve not less than $3,000,000 of amounts appropriated pursuant to subparagraph (A) for the purpose of carrying out the Training Technology Transfer Act of 1988.

"(2) In carrying out the requirements of this section, regional technology-transfer centers are authorized—

"(A) to build on or, where needed, develop telecommunications systems to link the centers and their affiliates with industrial users;

"(B) to build on or develop necessary computer networks and data bases; and

"(C) to utilize or help develop regional and national libraries.

"(b) Financial assistance to each center shall be awarded competitively. Such financial assistance shall be awarded for the establishment or operation of such centers.

"(c) Each regional center established shall be operated by an appropriately qualified college or university within the region, a consortium of such schools within the region, or a university-related research park or center, and such regional center shall, where deemed necessary, establish one or more affiliate centers at colleges and universities based in other States within the region.

"(d) In establishing such centers, the institutions applying shall show in their application—

"(1) how the center will facilitate the economy of the region;

"(2) that the center's mission is compatible with the economic development plans of States in the region; and

"(3) that appropriate consultation with the relevant State agencies concerned with economic development has taken place.

"(e)(1) Such center also may be operated by a consortium composed of an entity or entities described in subsection (c), and an existing campus-based research entity, or other State and local agencies, nonprofit agencies, interstate higher education organizations, or, where appropriate, for-profit agencies. The Secretary, through regulation, shall determine a mechanism for assessing the percentage of operating costs paid by other members of a technology transfer consortium arrangements.

"(2) For the purpose of paragraph (1), the term 'existing campus-based research facilities includes agricultural research facilities, mining and minerals research facilities; forestry and wood-products research facilities, solar renewable energy research facilities, high technology facilities, and manufacturing technology research facilities.

"(f) Each such center shall establish a Board to advise the center on policy. Such board shall be—

"(1) representative of the States involved in the region; and

"(2) consist of representatives for urban areas, rural areas, ethnic concerns, business, labor, and education.

"(g)(1) Grants for each center shall be awarded for a 5-year period. Before the end of such period, the Secretary shall conduct a competition for the award of grants for the succeeding 5-year period.

"(2) For the fourth and fifth year of each such 5-year period, and during any renewal of the grant for succeeding 5-year periods, 50 percent of the cost of the activities for which assistance is awarded shall be provided from non-Federal sources.

"(h) Funding for affiliate centers authorized in subsection (c) shall be provided by the regional center and the college or university operating the affiliate center, with funding levels to be reached by the 2 entities in a scope-of-work agreement negotiated between the 2 entities. Should the affiliate center wish, its operations and funding support can be a consortia, as specified in subsection (e).

"(i)(1) The Secretary, after consultation with the Departments of Agriculture, Energy, Commerce, and Interior shall publish, for public comment, a proposed list of priorities for the establishment of regional technology transfer centers and shall propose the regional composition of such centers, keeping in mind that satellite and telecommunications technology enables regions to contain noncontiguous States.

"(2) The Secretary shall publish the final list of regions and priorities along with the public's comments. In establishing such regions, the Secretary may designate a State or a portion of a State as a region.".

CHAPTER 5—LIBRARY TECHNOLOGY ENHANCEMENT

SEC. 6241. LIBRARY TECHNOLOGY ENHANCEMENT.

Section 201(b) of the Higher Education Act of 1965 is amended by adding at the end thereof the following:

"(5) There are authorized to be appropriated to carry out the purposes of part D an additional $2,500,000 for fiscal year 1988 and such additional sums as may be necessary for each of the 3 succeeding fiscal years. Activities supported by funds appropriated pursuant to this paragraph shall be activities that will enable libraries to participate more fully in the initiative funded under the Education and Training for American Competitiveness Act of 1987.".

CHAPTER 6—INTERNATIONAL BUSINESS EDUCATION PROGRAM

SEC. 6261. CENTERS FOR INTERNATIONAL BUSINESS EDUCATION AUTHORIZED.

Title VI of the Higher Education Act of 1965 is further amended—

(1) by redesignating sections 612 and 613 as sections 613 and 614, respectively; and

(2) by inserting after section 611 the following new section:

"CENTERS FOR INTERNATIONAL BUSINESS EDUCATION

"SEC. 612. (a) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, to pay the Federal share of the cost of planning, establishing and operating centers for international business education which—

"(1) will be national resources for the teaching of improved business techniques, strategies, and methodologies which emphasize the international context in which business is transacted,

"(2) will provide instruction in critical foreign languages and international fields needed to provide understanding of the cultures and customs of United States trading partners, and

"(3) will provide research and training in the international aspects of trade, commerce, and other fields of study.

In addition to providing training to students enrolled in the institution of higher education in which a center is located, such centers shall serve as regional resources to businesses proximately located by offering programs and providing research designed to meet the international training needs of such businesses.

"(b) Each grant made under this section may be used to pay the Federal share of the cost of planning, establishing or operating a center, including the cost of—

"(1) faculty and staff travel in foreign areas, regions, or countries,

"(2) teaching and research materials,

"(3) curriculum planning and development,

"(4) bringing visiting scholars and faculty to the center to teach or to conduct research, and

"(5) training and improvement of the staff, for the purpose of, and subject to such conditions as the Secretary finds necessary for, carrying out the objectives of this section.

"(c)(1) Programs and activities to be conducted by centers assisted under this section shall include—

"(A) interdisciplinary programs which incorporate foreign language and international studies training into business, finance, management, communications systems, and other professional curricula;

"(B) interdisciplinary programs which provide business, finance, management, communications systems, and other professional training for foreign language and international studies faculty and advanced degree candidates;

"(C) evening or summer programs, including, but not limited to, intensive language programs, available to members of the business community and other professionals which are designed to develop or enhance their international skills, awareness, and expertise;

"(D) collaborative programs, activities, or research involving other institutions of higher education, local educational agencies, professional associations, businesses, firms, or combinations thereof, to promote the development of international skills, awareness, and expertise among current and prospective members of the business community and other professionals;

"(E) research designed to strengthen and improve the international aspects of business and professional education and to promote integrated curricula; and

"(F) research designed to promote the international competitiveness of American businesses and firms, including those not currently active in international trade.

"(2) Programs and activities to be conducted by centers assisted under this section may include—

"(A) the establishment of overseas internship programs for students and faculty designed to provide training and experience in international business activities, except that no Federal funds provided under this section may be used to pay wages or stipends to any participant who is engaged in compensated employment as part of an internship program; and

"(B) other eligible activities prescribed by the Secretary.

"(d)(1) In order to be eligible for assistance under this section, an institution of higher education, or combination of such institutions, shall establish a center advisory council which will conduct extensive planning prior to the establishment of a center concerning the scope of the center's activities and the design of its programs.

"(2) The Center Advisory Council shall include—

"(A) one representative of an administrative department or office of the institution of higher education;

"(B) one faculty representative of the business or management school or department of such institution;

"(C) one faculty representative of the international studies or foreign language school or department of such institution;

"(D) one faculty representative of another professional school or department of such institution, as appropriate;

"(E) one or more representative of local or regional businesses or firms;

"(F) one representative appointed by the Governor of the State in which the institution of higher education is located whose normal responsibilities include official oversight or involvement in State-sponsored trade-related activities or programs; and

"(G) such other individuals as the institution of higher education deems appropriate.

"(3) In addition to the initial planning activities required under subsection (d)(1), the center advisory council shall meet not less than once each year after the establishment of the center to assess and advise on the programs and activities conducted by the center.

"(e)(1) The Secretary shall make grants under this section for a minimum of 3 years unless the Secretary determines that the provision of grants of shorter duration is necessary to carry out the objectives of this section.

"(2) The Federal share of the cost of planning, establishing and operating centers under this section shall be—

"(A) not more than 90 per centum for the first year in which Federal funds are furnished,

"(B) not more than 70 per centum for the second such year, and

"(C) not more than 50 per centum for the third such year and for each such year thereafter.

"(3) The non-Federal share of the cost of planning, establishing, and operating centers under this section may be provided either in cash or in-kind assistance.

"(f)(1) Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the objectives of this section. Such conditions shall include—

"(A) evidence that the institution of higher education, or combination of such institutions, will conduct extensive planning prior to the establishment of a center concerning the scope of the center's activities and the design of its programs in accordance with subsection (d)(1);

"(B) assurance of ongoing collaboration in the establishment and operation of the center by faculty of the business, management, foreign language, international studies and other professional schools or departments, as appropriate;

"(C) assurance that the education and training programs of the center will be open to students concentrating in each of these respective areas, as appropriate; and

"(D) assurance that the institution of higher education, or combination of such institutions, will use the assistance provided under this section to supplement and not to supplant activities conducted by institutions of higher education described in subsection (c)(1).".

SEC. 6262. AUTHORIZATION OF APPROPRIATIONS.

Section 614 of the Act (as redesignated by section 6261 of this Act) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 614. (a) There are authorized to be appropriated $5,000,000 for the fiscal year 1988 and for each of the 3 succeeding fiscal years to carry out the provisions of section 612.

"(b) There are authorized to be appropriated $5,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years, to carry out the provisions of section 613.".

SEC. 6263. CONFORMING AMENDMENT.

Section 613 of the Act (as redesignated by section 6261 of this Act) is amended by striking out "part" each time it appears and inserting in lieu thereof "section".

CHAPTER 7—ADDITIONAL HIGHER EDUCATION PROVISIONS

SEC. 6271. RONALD E. McNAIR POST-BACCALAUREATE ACHIEVEMENT PROGRAM.

Section 417D(d)(6) of the Act is amended by striking out "in no case" and all that follows through the period and inserting in lieu thereof the following: "if—

"(A) the funds so allocated equal or exceed $168,800,000 but are less than $215,000,000 funds allocated to projects authorized under this subsection may not exceed—

"(i) $1,000,000 in the fiscal year 1988,

"(ii) $2,000,000 in the fiscal year 1989,

"(iii) $3,000,000 in the fiscal year 1990, and

"(iv) $4,000,000 in the fiscal year 1991, and

"(B) the funds so allocated equal or exceed $215,000,000 funds allocated to projects authorized under this subsection may not exceed $5,000,000.".

SEC. 6272. UNITED STATES INSTITUTE OF PEACE.

Section 25 of the Higher Education Technical Amendments Act of 1987 is amended by striking out "Section 1703" and inserting in lieu thereof "Section 1705(b)(3)".

Subtitle D—Employment and Training for Dislocated Workers

SEC. 6301. SHORT TITLE.

This title may be cited as the "Economic Dislocation and Worker Adjustment Assistance Act".

SEC. 6302. AMENDMENT TO TITLE III OF THE JOB TRAINING PARTNERSHIP ACT.

(a) IN GENERAL.—Title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.) is amended to read as follows:

"TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

"DEFINITIONS

"SEC. 301. (a) DISLOCATED WORKERS.—(1) For purposes of this title, the term 'eligible dislocated workers' means individuals who—

"(A) have been terminated or laid off or who have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation;

"(B) have been terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility, or enterprise;

"(C) are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including older individuals who may have substantial barriers to employment by reason of age; or

"(D) were self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters, subject to regulations prescribed by the Secretary.

"(2) For purposes of this title, the term 'additional dislocated worker' means a displaced homemaker as that term is defined in section 4(29) of this Act.

"(3) The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which paragraph (1)(D) applies.

"(b) ADDITIONAL DEFINITIONS.—For the purposes of this title—

"(1) The term 'labor-management committees' means committees voluntarily established to respond to actual or prospective worker dislocation, which ordinarily include (but are not limited to) the following—

"(A) shared and equal participation by workers and management;

"(B) shared financial participation between the company and the State, using funds provided under this title, in paying for the operating expenses of the committee;

"(C) a chairperson, to oversee and guide the activities of the committee, (i) who shall be jointly selected by the labor and management members of the committee, (ii) who is not employed by or under contract with labor or management at the site, and (iii) who shall provide advice and leadership to the committee and prepare a report on its activities;

"(D) the ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

"(E) a formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor; and

"(F) local job identification activities by the chairman and members of the committee on behalf of the affected workers.

"(2) The term 'local elected official' means the chief elected executive officer of a unit of general local government in a substate area.

"(3) The term 'service provider' means a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training, or employment services.

"(4) The term 'substate area' means that geographic area in a State established pursuant to section 312(a).

"(5) The term 'substate grantee' means that agency or organization selected to administer programs pursuant to section 312(b).

"(6) The term 'State' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"ALLOTMENT

"SEC. 302. (a) ALLOTMENT OF FUNDS.—From the funds appropriated pursuant to section 3(c) for any fiscal year, the Secretary shall—

"(1) allot 80 percent of such funds in accordance with the provisions of subsection (b); and

"(2) reserve 20 percent for use under part B of this title, subject to the reservation required by subsection (e) of this section.

"(b) ALLOTMENT AMONG STATES.—(1) Subject to the provisions of paragraph (2), the Secretary shall allot the amount available in each fiscal year under subsection (a)(1) on the basis of the following factors:

"(A) One-third of such amount shall be allotted among the States on the basis of the relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

"(B) One-third of such amount shall be allotted among the States on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States. For purposes of this paragraph, the term 'excess number' means the number which represents unemployed individuals in excess of 4.5 percent of the civilian labor force in the State.

"(C) One-third of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for 15 weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

"(2) As soon as satisfactory data are available under section 462(e) of this Act, the Secretary shall allot amounts appropriated to carry out part B and this part for any fiscal year to each State so that—

"(A) 25 percent of such amount shall be allotted on the basis of each of the factors described in subparagraphs (A), (B), and (C) of paragraph (1), respectively, for a total of 75 percent of the amount allotted; and

"(B) 25 percent of such amount shall be allotted among the States on the basis of the relative number of dislocated workers in such State in the most recent period for which satisfactory data are available under section 462(e) and, when available, under section 462(f) of this Act.

"(c) RESERVATIONS FOR STATE ACTIVITIES AND FOR SUBSTATE GRANTEES IN NEED.—(1) The Governor may reserve not more than 40 percent of the amount allotted to the State under section 302(a)(1) for—

"(A) State administration, technical assistance, and coordination of the programs authorized under this title;

"(B) statewide, regional, or industrywide projects;

"(C) rapid response activities as described in section 314(b);

"(D) establishment of coordination between the unemployment compensation system and the worker adjustment program system; and

"(E) discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or modification thereof.

"(2) In addition, the Governor may reserve not more than 10 percent of the amount allotted to the State under section 302(a)(1) for allocation among substate grantees. The amount so reserved shall be allocated on the basis of need and distributed to such grantees not later than 9 months after the beginning of the program year for which the allotment was made.

"(d) WITHIN STATE DISTRIBUTION.—The Governor shall allocate the remainder of the amount allotted to the State under this part to substate areas for services authorized in this part, based on an allocation formula prescribed by the Governor. Such formula may be amended by the Governor not more than once for each program year. Such formula shall utilize the most appropriate information available to the Governor to distribute amounts to address the State's worker readjustment assistance needs. Such information shall include (but is not limited to)—

"(1) insured unemployment data;

"(2) unemployment concentrations;

"(3) plant closing and mass layoff data;

"(4) declining industries data;

"(5) farmer-rancher economic hardship data; and

"(6) long-term unemployment data.

"(e) RESERVATION FOR THE TERRITORIES.—Not more than 0.3 percent of the amounts appropriated pursuant to section 3(c) and available under subsection (a)(2) of this section for any fiscal year shall be allocated among the Commonwealth of the Northern Mariana Islands and the other territories and possessions of the United States.

"RECAPTURE AND REALLOTMENT OF UNEXPENDED FUNDS

"SEC. 303. (a) GENERAL REALLOTMENT AUTHORITY.—For program years beginning July 1, 1989, and thereafter, the Secretary shall, in accordance with the requirements of this section, reallot to eligible States the funds allotted to States from funds appropriated for such program year that are available for reallotment.

"(b) AMOUNT AVAILABLE FOR REALLOTMENT.—The amount available for reallotment is equal to—

"(1) the amount by which the unexpended balance of the State allotment at the end of the program year prior to the program year for which the determination under this section is made exceeds 20 percent of such allotment for that prior program year; plus

"(2) the unexpended balance of the State allotment from any program year prior to the program year in which there is such excess.

"(c) METHOD OF REALLOTMENT.—(1) The Secretary shall determine the amount that would be allotted to each eligible State by using the factors described in section 302(b) to allocate among eligible States the amount available pursuant to subsection (b) of this section.

"(2) The Secretary shall allot to each eligible high unemployment State the amount determined for that State under the procedure in paragraph (1) of this subsection.

"(3) The Secretary shall, by using the factors described in section 302(b), allot to eligible States the amount available that remains after the allotment required by paragraph (2) of this subsection.

"(d) STATE PROCEDURES WITH RESPECT TO REALLOTMENT.—The Governor of each State

shall prescribe uniform procedures for the expenditure of funds by substate grantees in order to avoid the requirement that funds be made available for reallotment under subsection (b). The Governor shall further prescribe equitable procedures for making funds available from the State and substate grantees in the event that a State is required to make funds available for reallotment under such subsection.

"(e) DEFINITIONS.—(1) For the purpose of this section, an eligible State means a State which has expended at least 80 percent of its allotment for the program year prior to the program year for which the determination under this section is made.

"(2) For the purpose of this section, an eligible high unemployment State means a State—

"(A) which meets the requirement in subsection (c)(1), and

"(B) which is among the States which has an unemployment rate greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

"(3) For purposes of this section, funds awarded from discretionary funds of the Secretary shall not be included in calculating any of the reallotments described in this section.

"PART A—STATE DELIVERY OF SERVICES

"STATE PLAN

"SEC. 311. (a) STATE PLAN REQUIRED.—In order to receive an allotment of funds under section 302(b), the Governor of a State shall submit to the Secretary, on a biennial basis, a State plan describing in detail the programs and activities that will be assisted with funds provided under this title. The State plan shall be submitted on or before the first day of May immediately preceding the program year for which funds are first to be made available under this title. Such plan shall include incentives to provide training of greater duration for those who require it, consistent with section 106(g).

(b) CONTENTS OF PLAN.—Each State plan shall contain provisions demonstrating to the satisfaction of the Secretary that the State will comply with the requirements of this title and that—

"(1) services under this title—

"(A) will, except as provided in paragraph (4), only be provided to eligible dislocated workers;

"(B) will not be denied to an eligible dislocated worker displaced by a permanent closure or substantial layoff within the State, regardless of the State of residence of such worker; and

"(C) may be provided to other eligible dislocated workers regardless of the State of residence of such worker;

"(2) the State will designate or create an identifiable State dislocated worker unit or office with the capability to respond rapidly, on site, to permanent closures and substantial layoffs throughout the State in order to assess the need for, and initially to provide for, appropriate basic readjustment services;

"(3) the State unit will—

"(A) make appropriate retraining and basic readjustment services available to eligible dislocated workers through the use of rapid response teams, substate grantees, and other appropriate organizations;

"(B) work with employers and labor organizations in promoting labor-management cooperation to achieve the goals of this title;

"(C) operate a monitoring, reporting, and management system which provides an adequate information base for effective program management, review, and evaluation; and

"(D) provide technical assistance and advice to substate grantees;

"(4) the State will provide to additional dislocated workers (as defined in section 301(a)(2)) the services available under this title to eligible dislocated workers only if the Governor of such State determines that such services may be provided to additional dislocated workers without adversely affecting the delivery of such services to eligible dislocated workers;

"(5) the State unit will exchange information and coordinate programs with—

"(A) the appropriate economic development agency, for the purpose of developing strategies to avert plant closings or mass layoffs and to accelerate the reemployment of affected individuals;

"(B) State education, training, and social services programs; and

"(C) all other programs available to assist dislocated workers (including the Job Service and the unemployment insurance system);

"(6) the State unit will disseminate throughout the State information on the availability of services and activities under this title;

"(7) any program conducted with funds made available under this title which will provide services to a substantial number of members of a labor organization will be established only after full consultation with such labor organization;

"(8) the State will not prescribe any standard for the operation of programs under this part that is inconsistent with section 106(g);

"(9) the State job training coordinating council has reviewed and commented in writing on the plan; and

"(10) the delivery of services with funds made available under this title will be integrated or coordinated with services or payments made available under chapter 2 of title II of the Trade Act of 1974 and provided by any State or local agencies designated under section 239 of the Trade Act of 1974.

"(c) REVIEW AND APPROVAL OF STATE PLANS.—The Secretary shall review any plan submitted under subsection (a), and any comments thereon submitted by the State job training coordinating council pursuant to subsection (b)(9), and shall notify a State as to any deficiencies in such plan within 30 days after submission. Unless a State has been so notified, the Secretary shall approve the plan within 45 days after submission. The Secretary shall not finally disapprove the plan of any State except after notice and opportunity for a hearing.

"(d) MODIFICATIONS—Any plan submitted under subsection (a) may be modified to describe changes in or additions to the programs and activities set forth in the plan, except that no such modification shall be effective unless reviewed and approved in accordance with subsection (c).

"(e) COMPLAINT, INVESTIGATION, PENALTY.—(1) Whenever the Secretary receives a complaint or a report from an aggrieved party or a public official that a State is not complying with the provisions of the State plan required by this section, the Secretary shall investigate such report or complaint.

"(2)(A) Whenever the Secretary determines that there has been such a failure to comply and that other remedies under this Act are not available or are not adequate to achieve compliance, the Secretary may withhold an amount not to exceed 10 percent of the allotment of the State for the fiscal year in which the determination is made for each such violation.

"(B) No determination may be made under this paragraph until the State affected is afforded adequate notice and opportunity for a hearing.

"(f) SPECIAL RULE.—The provisions of section 102(h) and 105(d), relating to cases in which a service delivery area is a State, shall apply to this title.

"SUBSTATE GRANTEES

"SEC. 312. (a) DESIGNATION OF SUBSTATE AREAS.—(1) The Governor of each State shall, after receiving any recommendations from the State job training coordinating council, designate substate areas for the State.

"(2) Each service delivery area within a State shall be included within a substate area and no service delivery area shall be divided among two or more substate areas.

"(3) In making designations of substate areas, the Governor shall consider—

"(A) the availability of services throughout the State;

"(B) the capability to coordinate the delivery of services with other human services and economic development programs; and

"(C) the geographic boundaries of labor market areas within the State.

"(4) Subject to paragraphs (2) and (3), the Governor—

"(A) shall designate as a substate area any single service delivery area that has a population of 200,000 or more;

"(B) shall designate as a substate area any two or more contiguous service delivery areas—

"(i) that in the aggregate have a population of 200,000 or more; and

"(ii) that request such designation; and

"(C) shall designate as a substate area any concentrated employment program grantee for a rural area described in section 101(a)(4)(A)(iii) of this Act.

"(5) The Governor may deny a request for designation under paragraph (4)(B) if the Governor determines that such designation would not be consistent with the effective delivery of services to eligible dislocated workers in various labor market areas (including urban and rural areas) within the State, or would not otherwise be appropriate to carry out the purposes of this title.

"(6) The designations made under this section may not be revised more than once each two years, in accordance with the requirements of this section.

"(b) DESIGNATION OF SUBSTATE GRANTEES.—A substate grantee shall be designated, on a biennial basis, for each substate area. Such substate grantee shall be designated in accordance with an agreement among the Governor, the local elected official or officials of such area, and the private industry council or councils of such area. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate representatives, in accordance with procedures established by the Governor (after consultation with the State job training coordinating council), to negotiate such agreement. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee.

"(c) ELIGIBILITY.—Entities eligible for designation as substate grantees include—

"(1) private industry councils in the substate area;

"(2) service delivery area grant recipients or administrative entities;

"(3) private nonprofit organizations;

"(4) units of general local government in the substate area, or agencies thereof;

"(5) local offices of State agencies; and

"(6) other public agencies, such as community colleges and area vocational schools.

"(d) FUNCTIONS OF SUBSTATE GRANTEES.—The substate grantee shall be responsible for providing, within such substate area, services described in section 314 (c), (d), and (e) pursuant to an agreement with the Governor and in accordance with the State plan under section 311 and the substate plan under section 313. The substate grantee may provide such services directly or through contract, grant, or agreement with service providers.

"(e) APPLICABILITY OF GENERAL ADMINISTRATIVE PROVISIONS TO SUBSTATE GRANTEES.—The requirements of parts C and D of title I of this Act that apply to an administrative entity or a recipient of financial assistance under this Act shall also apply to substate grantees under this title.

"SUBSTATE PLAN

"SEC. 313. (a) GENERAL RULE.—No amounts appropriated for any fiscal year may be provided to a substate grantee unless the Governor (after considering the recommendations of the State job training coordinating council) has approved a substate plan, or modification thereof, submitted by the substate grantee describing the manner in which activities will be conducted within the substate area. Prior to the submission to the Governor, the plan shall be submitted for review and comment to the other parties to the agreement described in section 312(b).

"(b) CONTENTS OF SUBSTATE PLAN.—The substate plan shall contain a statement of—

"(1) the means for delivering services described in section 314 to eligible dislocated workers;

"(2) the means to be used to identify, select, and verify the eligibility of program participants;

"(3) the means for implementing the requirements of section 314(f);

"(4) the means for involving labor organizations in the development and implementation of services;

"(5) the performance goals to be achieved consistent with the performance goals contained in the State plan pursuant to section 311(b)(8);

"(6) procedures, consistent with section 107, for selecting service providers which take into account past performance in job training or related activities, fiscal accountability, and ability to meet performance standards;

"(7) a description of the methods by which the substate grantee will respond expeditiously to worker dislocation where the rapid response assistance required by section 314(b) is inappropriate, including worker dislocation in sparsely populated areas, which methods may include (but are not limited to)—

(A) development and delivery of widespread outreach mechanisms;

(B) provision of financial evaluation and counseling (where appropriate) to assist in determining eligibility for services and the type of services needed;

(C) initial assessment and referral for further basic adjustment and training services; and

(D) establishment of regional centers for the purpose of providing such outreach, assessment, and early readjustment assistance;)

"(8) a description of the methods by which the other parties to the agreement described in section 312(b) may be involved in activities of the substate grantee;

"(9) a description of training services to be provided, including—

"(A) procedures to assess participants' current education skill levels and occupational abilities;

"(B) procedures to assess participants' needs, including educational, training, employment, and social services;

"(C) methods for allocating resources to provide the services recommended by rapid response teams for eligible dislocated workers within the substate area; and

"(D) a description of services and activities to be provided in the substate area;

"(10) the means whereby coordination with other appropriate programs, services, and systems will be effected, particularly where such coordination is intended to provide access to the services of such other systems for program participants at no cost to the worker readjustment program; and

"(11) a detailed budget, as required by the State.

"(c) PLAN APPROVAL.—The Governor shall approve or disapprove the plan of a substate grantee in the manner required by section 105(b)(1), (2), and (3). If a substate grantee fails to submit a plan, or submits a plan that is not approved by the Governor in accordance with such section, the Governor may direct the expenditure of funds allocated to the substate area until such time as a plan is submitted and approved or a new substate grantee is designated under section 312.

"(d) BY-PASS AUTHORITY.—If a substate grantee fails to expend funds allocated to it in accordance with its plan, the Governor may, subject to appropriate notice and opportunity for comment in the manner required by section 105(b)(1), (2), and (3), direct the expenditure of funds in accordance with the substate plan until—

"(1) the substate grantee corrects the failure,

"(2) the substate grantee submits an acceptable modification to its plan pursuant to subsection (a), or

"(3) a new substate grantee is designated under section 312.

"USE OF FUNDS; SERVICES TO BE PROVIDED

"SEC. 314. (a) IN GENERAL.—Funds allotted under section 302 may be used—

"(1) to provide rapid response assistance in accordance with subsection (b);

"(2) to deliver, coordinate, and integrate basic readjustment services and support services in accordance with subsection (c);

"(3) to provide retraining services in accordance with subsection (d);

"(4) to provide needs-related payments in accordance with subsection (e); and

"(5) to provide for coordination with the unemployment compensation system in accordance with subsection (f).

"(b) RAPID RESPONSE ASSISTANCE.—(1) The dislocated worker unit required by section 311(b)(2) shall include specialists who may use funds available under this title—

"(A) to establish on-site contact with employer and employee representatives within a short period of time (preferably 48 hours or less) after becoming aware of a current or projected permanent closure or substantial layoff in order to—

(i) provide information on and facilitate access to available public programs and services; and

(ii) provide emergency assistance adapted to the particular closure or layoff;

"(B) to promote the formation of labor-management committees, by providing—

"(i) immediate assistance in the establishment of the labor-management committee, including providing immediate financial assistance to cover the start-up costs of the committee;

"(ii) a list of individuals from which the chairperson of the committee may be selected;

"(iii) technical advice as well as information on sources of assistance, and liaison with other public and private services and programs; and

"(iv) assistance in the selection of worker representatives in the event no union is present;

"(C) to collect information related to—

"(i) economic dislocation (including potential closings or layoffs); and

"(ii) all available resources within the State for displaced workers,

which information shall be made available on a regular basis to the Governor and the State job training coordinating council to assist in providing an adequate information base for effective program management, review, and evaluation;

"(D) to provide or obtain appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in efforts to avert worker dislocations;

"(E) to disseminate information throughout the State on the availability of services and activities carried out by the dislocated worker unit or office; and

"(F) to assist the local community in developing its own coordinated response and in obtaining access to State economic development assistance.

"(2) In a situation involving an impending permanent closure or substantial layoff, a State may provide funds, where other public or private resources are not expeditiously available, for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

"(c) BASIC READJUSTMENT SERVICES.—Funds allotted under section 302 may be used to provide basic readjustment services to eligible dislocated workers. Subject to limitations set forth in subsection (e) and section 315(a), the services may include (but are not limited to)—

"(1) development of individual readjustment plans for participants in programs under this title;

"(2) outreach and intake;

"(3) early readjustment assistance;

"(4) job or career counseling;

"(5) testing;

"(6) orientation;

"(7) assessment, including evaluation of educational attainment and participant interests and aptitudes;

"(8) determination of occupational skills;

"(9) provision of future world-of-work and occupational information;

"(10) job placement assistance;

"(11) labor market information;

"(12) job clubs;

"(13) job search;

"(14) job development;

"(15) supportive services, including child care, commuting assistance, and financial and personal counseling which shall terminate not later than the 90th day after the participant has completed other services under this part, except that counseling necessary to assist participants to retain employment shall terminate not later than 6 months following the completion of training;

"(16) prelayoff assistance;

"(17) relocation assistance; and

"(18) programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

"(d) RETRAINING SERVICES.—(1) Funds allotted under section 302 may be used to provide training services under this part to eligible dislocated workers. Such services may include (but are not limited to)—

"(A) classroom training;

"(B) occupational skill training;

"(C) on-the-job training;

"(D) out-of-area job search;

"(E) relocation;

"(F) basic and remedial education;

"(G) literacy and English for non-English speakers training;

"(H) entrepreneurial training; and

"(I) other appropriate training activities directly related to appropriate employment opportunities in the substate area.

"(2) No funds under this part may be expended to provide wages for public service employment.

"(e) NEEDS-RELATED PAYMENTS.—(1) Funds allocated to a substate grantee under section 302(d) may be used pursuant to a substate plan under section 313 to provide needs-related payments to an eligible dislocated worker who does not qualify or has ceased to qualify for unemployment compensation, in order to enable such worker to participate in training or education programs under this title. To be eligible for such payments, an eligible dislocated worker who has ceased to qualify for unemployment compensation must have been enrolled in training by the end of the 13th week of the worker's initial unemployment compensation benefit period, or, if later, the end of the 8th week after an employee is informed that a short-term layoff will in fact exceed 6 months.

"(2) The level of needs-related payments shall be made available at a level not greater than the higher of—

"(A) the applicable level of unemployment compensation; or

"(B) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

"(f) COORDINATION WITH UNEMPLOYMENT COMPENSATION.—Funds allocated to a State under section 302 may be used for coordination of worker readjustment programs and the unemployment compensation system, consistent with the limitation on administrative expenses in section 315. Each State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs within such State.

"LIMITATIONS ON USES OF FUNDS

"SEC. 315. (a) USE OF FUNDS FOR RETRAINING SERVICES.—(1) Not less than 50 percent of the funds expended under this title by any substate grantee shall be expended for retraining services specified under section 314(d).

"(2) A substate grantee may apply to the Governor for a waiver of the requirement in paragraph (1). Such waiver may not permit less than 30 percent of the funds to be spent for such retraining services. The waiver may be granted in whole or in part if the substate grantee demonstrates that the worker readjustment program in the area will be consistent with the principle that dislocated workers be prepared for occupations or industries with long-term potential. The Governor shall prescribe criteria for the demonstration required by the previous sentence.

"(3) An application for such a waiver shall be submitted at such time and in such form as the Governor may prescribe. The Governor shall provide an opportunity for public comment on the application.

"(b) NEEDS-RELATED PAYMENTS AND SUPPORTIVE SERVICES LIMITATION.—Not more than 25 percent of the funds expended under this title by any substate grantee or by the Governor may be used to provide needs-related payments and other supportive services.

"(c) ADMINISTRATIVE COST LIMITATION.—Not more than 15 percent of the funds expended under this title by any substate grantee or by the Governor may be expended to cover the administrative cost of programs under this title. For purposes of this subsection, administrative cost does not include the cost of activities under section 314(b).

"RETRAINING SERVICES AVAILABILITY

"SEC. 316. (a) ALTERNATIVE METHODS OF PROVIDING RETRAINING SERVICES.—A substate grantee may provide retraining services described in section 314(d) to an eligible dislocated worker—

"(1) by beginning such services promptly upon the worker's application for the program under this title;

"(2) by deferring the beginning of such services and providing the worker with a certificate of continuing eligibility in accordance with subsection (b)(1) and (2); or

"(3) by permitting the worker to obtain such services from a service provider using such certificate in accordance with subsection (b)(3).

"(b) CERTIFICATION OF CONTINUING ELIGIBILITY.—(1) A substate grantee may issue to any eligible dislocated worker who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility may be effective for periods not to exceed 104 weeks. No such certificate shall include any reference to any specific amount of funds. Any such certificate shall state that it is subject to the availability of funds at the time that any such training services are to be provided. Acceptance of such a certificate shall not be deemed to be enrollment in training.

"(2) Any individual to whom a certificate of continuing eligibility has been issued under paragraph (1) of this subsection shall remain eligible for the program authorized under this part for the period specified in the certificate, notwithstanding section 301(a), and may use the certificate in order to receive the retraining services, subject to the limitations contained in the certificate.

"(3) A substate grantee may provide training services through systems that permit eligible dislocated workers to use certificates of continuing eligibility to seek out and arrange their own retraining with service providers approved by that substate grantee. Retraining provided pursuant to the certificate shall be conducted under a grant, contract, or other arrangement between the substate grantee and the service provider.

"FUNCTIONS OF STATE JOB TRAINING COORDINATING COUNCIL

"SEC. 317. For purposes of this title, the State job training coordinating council shall—

"(1) provide advice to the Governor regarding the use of funds under this title, including advice on—

"(A) the designation of substate areas and substate grantees, and the procedures for the selection of representatives within such areas under section 312; and

"(B) the methods for allocation and reallocation of funds, including the method for distribution of funds reserved under section 302(c)(2) and funds subject to reallocation under section 303(d);

"(3) submit comments to the Governor and the Secretary on the basis of review of the State and substate programs under this title;

"(4) review, and submit written comments on, the State plan (and any modification thereof) before its submission under section 311;

"(5) review, and submit written comments on, each substate plan submitted to the Governor under section 313; and

"(6) provide advice to the Governor regarding performance standards.

"PART B—FEDERAL RESPONSIBILITIES

"FEDERAL ADMINISTRATION

"SEC. 321. (a) STANDARDS.—The Secretary shall promulgate standards for the conduct and evaluation of programs under this title.

"(b) BY-PASS AUTHORITY.—In the event that any State fails to submit a plan that is approved under section 311, the Secretary shall use the amount that would be allotted to that State to provide for the delivery in that State of the programs, activities, and services authorized by this title until the State plan is submitted and approved under that section.

"FEDERAL DELIVERY OF DISLOCATED WORKER SERVICES

"SEC. 322. (a) GENERAL AUTHORITY.—The Secretary shall, with respect to programs required by this title—

"(1) distribute funds to States in accordance with the requirements of section 302;

"(2) provide funds to exemplary and demonstration programs on plant closings and worker dislocation;

"(3) otherwise allocate discretionary funds to projects serving workers affected by multi-State or industry-wide dislocations and to areas of special need in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes the effective use of funds;

"(4) monitor performance and expenditures and annually certify compliance with standards prescribed by the Secretary under section 106(g);

"(5) conduct research and serve as a national clearinghouse for gathering and disseminating information on plant closings and worker dislocation; and

"(6) provide technical assistance and staff training services to States, communities, businesses, and unions, as appropriate.

"(b) ADMINISTRATIVE PROVISIONS.—The Secretary shall designate or create an identifiable dislocated workers unit or office to coordinate the functions of the Secretary under this title.

"ALLOWABLE ACTIVITIES

"SEC. 323. (a) CIRCUMSTANCES AND ACTIVITIES FOR USE OF FUNDS.—Amounts reserved for this part under section 302(a)(2) may be used to provide services of the type described in section 314 in the following circumstances:

"(1) mass layoffs, including mass layoffs caused by natural disasters or Federal actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

"(2) industrywide projects;

"(3) multistate projects;

"(4) special projects carried out through agreements with Indian tribal entities;

"(5) special projects to address national or regional concerns;

"(6) demonstration projects, including the projects described in section 324;

"(7) to provide additional financial assistance to programs and activities provided by States and substate grantees under part A of this title; and

"(8) to provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate.

"(b) USE OF FUNDS IN EMERGENCIES.—Amounts reserved for this part under section 302(a)(2) may also be used to provide services of the type described in section 314 whenever the Secretary (with agreement of the Governor) determines that an emergency exists with respect to any particular distressed industry or any particularly distressed area to provide emergency financial assistance to dislocated workers. The Secretary may make arrangements for the immediate provision of such emergency financial assistance for the purposes of this section with any necessary supportive documentation to be submitted at a date agreed to by the Governor and the Secretary.

"(c) STAFF TRAINING AND TECHNICAL ASSISTANCE.—(1) Amounts reserved for this part under section 302(a)(2) may be used to provide staff training and technical assistance services to States, communities, businesses and labor organizations, and other entities involved in providing adjustment assistance to workers. Applications for technical assistance funds shall be submitted in accordance with procedures issued by the Secretary.

"(2) Not more than 5 percent of the funds reserved for this part in any fiscal year shall be used for the purpose of this subsection.

"(d) TRAINING OF RAPID RESPONSE STAFFS.—Amounts reserved for this part under section 302(a)(2) shall be used to provide training of staff, including specialists, providing rapid response services. Such training shall include instruction in proven methods of promoting, establishing, and assisting labor-management committees.

"DEMONSTRATION PROGRAMS

"SEC. 324. (a) AUTHORIZED PROGRAMS.—From the amount reserved for this part under section 302(a)(2) for the fiscal years 1989, 1990, and 1991, not less than 10 percent of such amount shall be used for demonstration programs. Such demonstration programs may be up to three years in length, and shall include (but need not be limited to) at least two of the following demonstration programs:

"(1) self-employment opportunity demonstration program;

"(2) public works employment demonstration program;

"(3) dislocated farmer demonstration program; and

"(4) job creation demonstration program.

"(b) EVALUATION AND REPORT.—The Secretary shall conduct or provide for an evaluation of the success of each demonstration program, and shall prepare and submit to the Congress a report of the evaluation not later than October 1, 1992, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.".

SEC. 6303. AUTHORIZATION OF APPROPRIATIONS.

Section 3(c) of the Job Training Partnership Act is amended to read as follows:

"(c) There are authorized to be appropriated to carry out title III—

"(1) $980,000,000 for fiscal year 1989; and

"(2) such sums as may be necessary for each succeeding fiscal year.".

SEC. 6304. CONFORMING AMENDMENTS.

(a) PERFORMANCE STANDARDS.—Section 106 of the Job Training Partnership Act is amended—

(1) in subsection (e)—

(A) by inserting "and subsection (g)" after "subsection";

(B) by inserting after "State" the following: "and in substate areas; and

(2) in subsection (g)—

(A) by inserting "(1)" after "(g)"; and

(B) by adding at the end thereof the following new paragraph:

"(2) Any performance standard that may be prescribed under paragraph (1) of this subsection shall make appropriate allowance for the difference in cost resulting from serving workers receiving needs-related payments under section 314(e).".

(b) STATE JOB TRAINING COORDINATING COUNCIL.—Section 122(a)(3) of the Job Training Partnership Act is amended to read as follows:

"(3) The State job training coordinating council shall be composed as follows:

"(A) Thirty percent of the membership of the State council shall be representatives of business and industry (including agriculture, where appropriate), including individuals who are representatives of business and industry on private industry councils within the State.

"(B) Thirty percent of the membership of the State council shall be—

"(i) representatives of the State legislature, and State agencies and organizations, such as the State educational agency, the State vocational education board, the State advisory council on vocational education, the State board of education (when not otherwise represented), State public assistance agencies, the State employment security agency, the State rehabilitation agency, the State occupational information coordinating committee, State postsecondary institutions, the State economic development agency, State veterans' affairs agencies or equivalent, and such other agencies as the Governor determines to have a direct interest in employment and training and human resource utilization within the State; and

"(ii) representatives of the units or consortia of general local government in the State who shall be nominated by the chief elected officials of the units or consortia of units of general local government, and the representatives of local educational agencies who shall be nominated by local educational agencies.

"(C) Thirty percent of the membership of the State council shall be representatives of organized labor and representatives of community-based organizations in the State.

"(D) Ten percent of the membership of the State council shall be appointed from the general public by the Governor of the State.".

(c) TABLE OF CONTENTS.—The table of contents of such Act is amended by striking out the portion pertaining to title III and inserting the following:

"TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

"Sec. 301. Definitions.
"Sec. 302. Allotment.
"Sec. 303. Recapture and reallotment of unexpended funds.

"PART A—STATE DELIVERY OF SERVICES

"Sec. 311. State plan.
"Sec. 312. Substate grantees.
"Sec. 313. Substate plan.
"Sec. 314. Use of funds; services to be provided.
"Sec. 315. Limitations on uses of funds.
"Sec. 316. Retraining services availability.
"Sec. 317. Functions of state job training coordinating council.

"PART B—FEDERAL RESPONSIBILITIES

"Sec. 321. Federal administration.
"Sec. 322. Federal delivery of dislocated worker services.
"Sec. 323. Allowable activities.
"Sec. 324. Demonstration programs.".

SEC. 6305. TRANSITION PROVISIONS.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by sections 6302 and 6304 shall be effective for program years beginning on or after July 1, 1989.

(b) PROGRAM YEAR 1988-1989.—The Secretary of Labor and Governors shall, during the program year beginning July 1, 1988, continue to administer title III of the Job Training Partnership Act in the same manner as such title was administered during prior program years, except to the extent necessary to provide for an orderly transition to and implementation of the amendments made by this subtitle. The Secretary and Governors may, for such purposes, use funds appropriated for fiscal year 1989 or any preceding fiscal year to carry out appropriate transition and implementation activities. Such activities may include—

(1) activities to prevent disruption in the delivery of services to program participants; and

(2) planning for and implementation of such amendments.

(c) STATE JOB TRAINING COORDINATING COUNCIL.—A State job training coordinating council shall comply with the changes in membership required by the amendment made by section 6304(b) not later than January 1, 1989. Upon certification by the Governor to the Secretary that such changes in membership have been accomplished, such council shall begin to perform the functions specified by section 317 of the Job Training Partnership Act (as amended by this subtitle).

(d) SUBSTATE AREAS AND GRANTEES.—The designation of substate areas and substate grantees required by the amendment to title III of such Act shall be completed not later than March 1, 1989.

(e) LIMITATION ON CARRY-OVER OF FUNDS.—The provisions of section 303 of such Act (as amended) shall apply to the program year beginning July 1, 1988, except that, for such program year—

(1) subsection (b)(1) of such section shall be applied by substituting "30 percent" for "20 percent"; and

(2) subsection (e) of such section shall be applied by substituting "70 percent" for "80 percent".

(f) REGULATIONS.—The Secretary of Labor shall prescribe such regulations as may be required to implement the amendments made by this subtitle not later than November 1, 1988.

SEC. 6306. STUDIES.

(a) DATA ON DISPLACED FARMERS AND RANCHERS.—Section 462 of such Act is amended by adding at the end the following new subsection:

"(f)(1) The Secretary shall develop, in coordination with the Secretary of Agriculture, statistical data relating to permanent dislocation of farmers and ranchers due to farm and ranch failures. Among the data to be included are—

"(A) the number of such farm and ranch failures;

"(B) the number of farmers and ranchers displaced;

"(C) the location of the affected farms and ranches;

"(D) the types of farms and ranches involved; and

"(E) the identification of farm family members, including spouses, and farm workers working the equivalent of a full-time job on the farm who are dislocated by such farm and ranch failures.

"(2) The Secretary shall publish a report based upon such data as soon as practicable after the end of each calendar year. Such report shall include a comparison of data contained therein with data currently used by the Bureau of Labor Statistics in determining the Nation's annual employment and unemployment rates and an analysis of whether farmers and ranchers are being adequately counted in such employment statistics. Such report shall also include an analysis of alternative methods for reducing the adverse effects of displacements of farmers and ranchers, not only on the individual farmer or rancher, but on the surrounding community.".

(b) FAILURE TO PROVIDE INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—(1) The Secretary of Labor shall conduct a study, in consultation with the Secretary of State, to identify the extent to which countries recognize and enforce, and the producers fail to comply with, internationally recognized worker rights. A report on the study conducted under this subsection shall be submitted to Congress biennially.

(2) As used in this Act, the term "internationally recognized worker rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) the right to be free from 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, maximum hours of work, and occupational safety and health.

(c) ADDITIONAL STUDIES.—The National Commission for Employment Policy shall conduct research related to the provisions of this title. Such research shall include examinations of—

(1) the role of the employment services in implementing programs to enhance services provided under this title, and

(2) alternative techniques for managing production cutbacks without permanently reducing workforces.

A report on the research conducted under this subsection shall be submitted to the Congress not later than 18 months after the date of enactment of this Act.

SEC. 6307. JOB BANKS.

(a) AMENDMENT.—Title V of the Job Training Partnership Act is amended by adding at the end thereof the following new section:

"STATE JOB BANK SYSTEMS

"SEC. 505. (a)(1) The Secretary shall carry out the purposes of this section with sums appropriated pursuant to paragraph (2) for any fiscal year.

"(2) There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year.

"(b) The Secretary shall make such sums available through the United States Employment Service for the development and implementation of job bank systems in each State. Such systems shall be designed to use computerized electronic data processing and telecommunications systems for such purposes as—

"(1) identifying job openings and referring jobseekers to job openings, with continual updating of such information;

"(2) providing information on occupational supply and demand; and

"(3) utilization of such systems by career information delivery systems (including career counseling programs in schools).

"(c) Wherever possible, computerized data systems developed with assistance under this section shall be capable of utilizing software compatible with other systems (including management information systems and unemployment insurance and other income maintenance programs) used in the administration of employment and training programs. In developing such systems, special consideration shall be given to the advice and recommendations of the State occupational information coordinating committees (established under section 422(b) of the Carl D. Perkins Vocational Education Act), and other users of such systems for the various purposes described in subsection (b) of this section.".

(b) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 504 the following:

"Sec. 505. State job bank systems.".

Subtitle E—Advance Notification of Plant Closings and Mass Layoffs

SEC. 6401. SHORT TITLE.

This subtitle may be cited as the "Worker Adjustment and Retraining Notification Act".

SEC. 6402. DEFINITIONS; EXCLUSIONS FROM DEFINITION OF LOSS OF EMPLOYMENT.

(a) DEFINITIONS.—As used in this subtitle—

(1) the term "employer" means any business enterprise that employs—

(A) 100 or more employees, excluding part-time employees; or

(B) 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime);

(2) the term "plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees;

(3) the term "mass layoff" means a reduction in force which—

(A) is not the result of a plant closing; and

(B) results in an employment loss at the single site of employment during any 30-day period for—

(i)(I) at least 33 percent of the employees (excluding any part-time employees); and

(II) at least 50 employees (excluding any part-time employees); or

(ii) at least 500 employees (excluding any part-time employees);

(4) the term "representative" means an exclusive representative of employees within the meaning of section 9(a) or 8(f) of the National Labor Relations Act (29 U.S.C. 159(a), 158(f)) or section 2 of the Railway Labor Act (45 U.S.C. 152);

(5) the term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer;

(6) subject to subsection (b), the term "employment loss" means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff exceeding 6 months, or (C) a reduction in hours of work of more than 50 percent during each month of any 6-month period;

(7) the term "unit of local government" means any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers; and

(8) the term "part-time employee" means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.

(b) EXCLUSIONS FROM DEFINITION OF EMPLOYMENT LOSS.—Notwithstanding subsection (a)(6), an employee may not be considered to have experienced an employment loss if—

(1) the closing or layoff is the result of the sale of part or all of an employer's business and—

(A) the purchaser agrees in writing, as part of the purchase agreement, to offer employment to the employee with no more than a 6-month break in employment and the agreement specifies that the employee is a third-party beneficiary; or

(B) the purchaser, within 30 days after the purchase, offers employment to the employee with no more than a 6-month break in employment; or

(2) the closing or layoff is the result of the relocation or consolidation of part or all of the employer's business and, prior to the closing or layoff—

(A) the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment; or

(B) the employer offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

SEC. 6403. NOTICE REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS.

(a) NOTICE TO EMPLOYEES, STATE DISLOCATED WORKER UNITS, AND LOCAL GOVERNMENTS.—An employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of a proposal to issue such an order—

(1) to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; and

(2) to the State dislocated worker unit (designated or created under title III of the Job Training Partnership Act) and the chief elected official of the unit of local government within which such closing or layoff is to occur.

If there is more than one such unit, the unit of local government which the employer shall notify is the unit of local government to which the employer pays the highest taxes for the year preceding the year for which the determination is made.

(b) REDUCTION OF NOTIFICATION PERIOD.—(1) An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone indefinitely the shutdown and the employer

reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.

(2) An employer may order a plant closing or mass layoff before the conclusion of the 60-day period if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

(3) An employer relying on this subsection shall give as much notice as is practicable and at that time shall give a brief statement of the basis for reducing the notification period.

(c) EXTENSION OF LAYOFF PERIOD.—A layoff of more than 6 months which, at its outset, was announced to be a layoff of 6 months or less, shall be treated as an employment loss under this subtitle unless—

(1) the extension beyond 6 months is caused by business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and

(2) notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

(d) DETERMINATIONS WITH RESPECT TO EMPLOYMENT LOSS.—For purposes of this section, in determining whether a plant closing or mass layoff has occurred or will occur, employment losses for 2 or more groups at a single site of employment, each of which is less than the minimum number of employees specified in section 6402(a) (2) or (3) but which in the aggregate exceed that minimum number, and which occur within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this subtitle.

SEC. 6404. EXEMPTIONS.

This subtitle shall not apply to a plant closing or mass layoff if—

(1) the closing is of a temporary facility or the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking; or

(2) the closing or layoff constitutes a strike or constitutes a lockout not intended to evade the requirements of this subtitle.

SEC. 6405. ADMINISTRATION AND ENFORCEMENT OF REQUIREMENTS.

(a) CIVIL ACTIONS AGAINST EMPLOYERS.—(1) Any employer who orders a plant closing or mass layoff in violation of section 6403 of this Act shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for—

(A) back pay for each day of violation at a rate of compensation not less than the higher of—

(i) the average regular rate received by such employee during the last 3 years of the employee's employment; or

(ii) the final regular rate received by such employee; and

(B) benefits under an employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred.

Such liability shall be calculated for the period of the violation, up to a maximum of 60 days, but in no event for more than one-half the number of days the employee was employed by the employer.

(2) The amount for which an employer is liable under paragraph (1) shall be reduced by—

(A) any wages paid by the employer to the employee for the period of the violation;

(B) any voluntary and unconditional payment by the employer to the employee that is not required by any legal obligation; and

(C) any payment by the employer to a third party or trustee (such as premiums for health benefits or payments to a defined contribution pension plan) on behalf of and attributable to the employee for the period of the violation.

In addition, any liability incurred under paragraph (1) with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the violation.

(3) Any employer who violates the provisions of section 6403 with respect to a unit of local government shall be subject to a civil penalty of not more than $500 for each day of such violation, except that such penalty shall not apply if the employer pays to each aggrieved employee the amount for which the employer is liable to that employee within 3 weeks from the date the employer orders the shutdown or layoff.

(4) If an employer which has violated this subtitle proves to the satisfaction of the court that the act or omission that violated this subtitle was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this subtitle the court may, in its discretion, reduce the amount of the liability or penalty provided for in this section.

(5) A person seeking to enforce such liability, including a representative of employees or a unit of local government aggrieved under paragraph (1) or (3), may sue either for such person or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

(6) In any such suit, the court may, in addition to any judgment awarded the plaintiff or plaintiffs, allow a reasonable attorneys' fee to be paid by the defendant, together with the costs of the action.

(7) For purposes of this subsection, the term, "aggrieved employee" means an employee who has worked for the employer ordering the plant closing or mass layoff and who, as a result of the failure by the employer to comply with section 6403, did not receive timely notice either directly or through his or her representative as required by section 6403.

(b) EXCLUSIVITY OF REMEDIES.—The remedies provided for in this section shall be the exclusive remedies for any violation of this subtitle.

SEC. 6406. PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.

The rights and remedies provided to employees by this subtitle are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the employees, and are not intended to alter or affect such rights and remedies, except that the period of notification required by this subtitle shall run concurrently with any period of notification required by contract or by any other statute.

SEC. 6407. PROCEDURES ENCOURAGED WHERE NOT REQUIRED.

It is the sense of Congress that an employer who is not required to comply with the notice requirements of section 6403 should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

SEC. 6408. AUTHORITY TO PRESCRIBE REGULATIONS.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out this subtitle. Such regulations shall, at a minimum, include interpretative regulations describing the methods by which employers may provide for appropriate service of notice as required by this subtitle.

SEC. 6409. EFFECT ON OTHER LAWS.

The giving of notice pursuant to this subtitle, if done in good faith compliance with this subtitle, shall not constitute a violation of the National Labor Relations Act or the Railway Labor Act.

SEC. 6410. EFFECTIVE DATE.

This subtitle shall take effect on the date which is 6 months after the date of enactment of this Act, except that the authority of the Secretary of Labor under section 6408 is effective upon enactment.

Subtitle F—National Science Foundation University Infrastructure

SEC. 6501. SHORT TITLE.

This subtitle may be cited as the "National Science Foundation University Infrastructure Act of 1988".

SEC. 6502. NATIONAL SCIENCE FOUNDATION ACADEMIC RESEARCH FACILITIES MODERNIZATION PROGRAM.

(a) PURPOSE.—It is the purpose of this section to assist in modernizing and revitalizing the Nation's research facilities at institutions of higher education, independent nonprofit research institutions and research museums through capital investments.

(b) ESTABLISHMENT OF PROGRAM.—To carry out this purpose, the National Science Foundation shall establish and carry out an Academic Research Facilities Modernization Program, under which awards shall be made to institutions of higher education, independent nonprofit research institutions and research museums, and consortia thereof, for the repair, renovation, or replacement (as appropriate) of such institutions' obsolete laboratories and other research facilities.

(c) PROJECTS AND FUNDING.—(1) The Academic Research Facilities Modernization Program established by the National Science Foundation pursuant to subsection (b) shall be carried out, through projects—

(A) which involve the repair, renovation, or replacement (as appropriate) of specific research facilities at the eligible institutions or consortia thereof involved, and

(B) for which funds are awarded in response to specific proposals submitted by such eligible institutions or consortia thereof in accordance with regulations prescribed by the Director of the Foundation, pursuant to subsection (d), with the objective of carrying out the purpose of this section.

(2) The regulations so prescribed shall contain such terms, conditions, and guidelines as may be necessary in the light of that objective, but shall in any event provide that—

(A) funds to carry out the program will be awarded to an institution after a comprehensive review using established Foundation procedures, and

(B) the funds so awarded to any eligible institution or consortia thereof will be in an amount equal to not more than 50 percent of the cost of the repair, renovation, or replacement involved (with the funds required to meet the remainder of such cost being provided by the institution involved or consor-

tia thereof or from other non-Federal public or private sources).

(d) CRITERIA FOR AWARDS.—(1) Annually, or prior to the issuance of a program announcement for solicitation of proposals for the award of funds to any institution or consortia thereof for a project under the National Science Foundation Academic Research Facilities Modernization Program, the National Science Foundation shall publish in the Federal Register interim guidelines for public review and comment for a period of 60 days. Such guidelines shall include (but not be limited to) the following:

(A) specific definitions for the terms: facilities, instrumentation, equipment, repair, renovation, and replacement;

(B) specific selection criteria to be used in evaluating the scientific merit of proposals and, in making awards to an institution or to consortia thereof, including an analysis of the age and condition of existing research facilities; and

(C) specific provisions for matching the Federal grant pursuant to subsection (b).

(2) Final guidelines shall be published in the Federal Register 60 days following the close of the comment period incorporating such appropriate revisions as may arise from comments received during the review period. The guidelines, at a minimum, shall include selection criteria for the following:

(A) the quality of the research and training to be carried out in the facility or facilities involved;

(B) the congruence of the institution's research and training activities with the future research needs of the Nation and the training and research mission of the National Science Foundation;

(C) the contribution which the project will make toward meeting national, regional, and the institution's research and related training needs; and

(D) the need for the proposed repair, renovation, or replacement (as appropriate) based on an analysis of the age and condition of existing research facilities and equipment.

(e) DISTRIBUTION OF FUNDS.—Awards made under the National Science Foundation Academic Research Facilities Modernization Program shall not exceed $5,000,000 to any institution or consortium over any period of 5 years for the repair, renovation, or replacement (as appropriate) of academic research facilities.

(f) CONSULTATIONS.—In prescribing criteria and conducting the program under this section, the Director of the National Science Foundation shall consult with the Secretary of Education and other related agencies.

(g) RESERVATIONS FOR CERTAIN INSTITUTIONS.—(1) At least 15 percent of the amount which is appropriated pursuant to this section in any fiscal year shall be available only for awards to universities, colleges, and research museums that received less than $10,000,000 in total Federal obligations for research and development (including obligations for the activities authorized in this section and section 6503) in each of the two preceding fiscal years.

(2) Of the amounts appropriated under this section in each fiscal year a least 10 percent of the funds shall be reserved for institutions of higher education servicing a substantial percentage of students who are Black Americans, Native Americans, Hispanic Americans, Alaskan Natives (Eskimos or Aleut), Native Hawaiian, American Samoan, Micronesian, Guamanian (Chamorro), Northern Marianian, or Palauan.

(3) Requirements of paragraph (2) may be satisfied by considering the funds awarded under paragraph (1) to the institutions described in paragraph (2).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $85,000,000 for fiscal year 1989 to carry out the National Science Foundation Academic Research Facilities Modernization Program. Such sums shall be available for that Program every year thereafter subject to the authorizations and appropriations of activities for the National Science Foundation.

SEC. 6503. NATIONAL SCIENCE FOUNDATION COLLEGE SCIENCE INSTRUMENTATION PROGRAM.

(a) PURPOSE.—It is the purpose of this section to assist in revitalizing the Nation's academic instructional instrumentation at colleges.

(b) ESTABLISHMENT OF PROGRAM.—To carry out this purpose, the National Science Foundation shall establish and carry out the College Science Instrumentation Program, under which awards are made only to two-year and community colleges and four-year, non-Ph.D degree-granting institutions or consortia thereof for the purchase of instructional instrumentation.

(c) PROJECTS AND FUNDING.—(1) The College Science Instrumentation Program established by the National Science Foundation pursuant to subsection (b) shall be carried out, through projects—

(1) which involve the purchase and replacement (as appropriate) of specific instructional instrumentation at the institutions involved, and

(2) for which funds are awarded in response to specific proposals submitted by such institutions or consortia thereof on a competitive basis in accordance with regulations prescribed by the Director of the Foundation with the objective of carrying out the purposes of this Act.

(2) The regulations so prescribed shall contain such terms, conditions, and guidelines as may be necessary in the light of that objective, but shall in any event provide that—

(A) funds to carry out the program will be awarded to an institution or consortia thereof after a comprehensive review using established Foundation procedures, and

(B) the funds so awarded to any academic institution will be in an amount equal to not more than 50 percent of the cost of the purchase and replacement involved (with the funds required to meet the remainder of such cost being provided by the institution involved or from other non-Federal public or private sources).

(d) CRITERIA FOR AWARDS.—The National Science Foundation will evaluate proposals on the basis of the following criteria:

(1) PERFORMANCE COMPETENCE.—This criterion relates to the capacity of the investigator or investigators, the technical soundness of the proposed approach, the adequacy of the institutional resources available, and the proposed recent research/science education performance.

(2) INTRINSIC MERIT.—This criterion relates to the quality, currency, and significance of the scientific content and related instructional activity of the project within the context of undergraduate science, mathematics, and engineering education.

(3) UTILITY OR RELEVANCE.—This criterion relates to the impact the project will have at the proposing institution, and the relevance of the project in the local context.

(4) EFFECT ON THE INFRASTRUCTURE OF SCIENCE AND ENGINEERING.—This criterion relates to the potential of the proposed project to contribute to better understanding or improvement of the quality, distribution, effectiveness of the Nation's scientific and engineering research, education, and manpower base.

(e) CONSULTATIONS.—In prescribing regulations and conducting the program under this section, the Director of the National Science Foundation shall consult with the Secretary of Education and other related agencies.

(f) AUTHORIZATION OF APPROPRIATIONS.—Such sums shall be available for the College Science Instrumentation Program subject every year to the authorizations and appropriations for the National Science Foundation.

TITLE VII—BUY AMERICAN ACT OF 1988

SEC. 7001. SHORT TITLE.

This title may be cited as the "Buy American Act of 1988".

SEC. 7002. AMENDMENTS TO THE BUY AMERICAN ACT.

Title III of the Act of March 3, 1933 (41 U.S.C. 10a-10d), is amended—

(1) by redesignating sections 4 and 5 as sections 5 and 6, respectively; and

(2) by inserting after section 3 the following new section:

"SEC. 4. (a) A Federal agency shall not award any contract—

"(1) for the procurement of an article, material, or supply mined, produced, or manufactured—

"(A) in a signatory country that is considered to be a signatory not in good standing of the Agreement pursuant to section 305(f)(3)(A) of the Trade Agreements Act of 1979; or

"(B) in a foreign country whose government 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, as identified by the President pursuant to section 305(g)(1)(A) of such Act; or

"(2) for the procurement of a service of any contractor or subcontractor that is a citizen or national of a foreign country identified by the President pursuant to section 305(f)(3)(A) or 305(g)(1)(A) of such Act, or is owned or controlled directly or indirectly by citizens or nationals of such a foreign country.

"(b) The prohibition on procurement in subsection (a) is subject to sections 305(h) and 305(j) of such Act and shall not apply—

"(1) with respect to services, articles, materials, or supplies procured and used outside the United States and its territories;

"(2) notwithstanding section 305(g) of such Act, to an eligible product of a country which is a signatory country unless that country is considered to be a signatory not in good standing pursuant to section 305(f)(3)(A) of such Act; or

"(3) notwithstanding section 305(g) of such Act, to a country that is a least developed country (as that term is defined in section 308(6) of that Act).

"(c) Notwithstanding subsection (a) of this section, the President or the head of a Federal agency may authorize the award of a contract or class of contracts if the President or the head of the Federal agency—

"(1) determines that such action is necessary—

"(A) in the public interest;

"(B) to avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, mate-

rials, or supplies of a single manufacturer or supplier; or

"(C) because there would be or are an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices; and

"(2) notifies the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, and the appropriate committees of the House of Representatives, of such determination—

"(A) not less than 30 days prior to the date of the award of the contract or the date of authorization of the award of a class of contracts; or

"(B) if the agency's need for the service, article, material, or supply is of such urgency that the United States would be seriously injured by delaying the award or authorization, not more than 90 days after the date of such award or authorization.

"(d) The authority of the head of a Federal agency under subsection (c) shall not apply to contracts subject to memorandums of understanding entered into by the Department of Defense (or any military department) and a representative of a foreign country (or agency or instrumentality thereof). In the case of any such contracts, any determinations and notice required by subsection (c) shall be made by—

"(1) the President, or

"(2) if delegated, by the Secretary of Defense or the Secretary of the Army, Navy, or Air Force, subject to review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)).

"(e) The authority of the head of a Federal agency under subsection (c) or (d) of this section may not be delegated.

"(f) Nothing in this section shall restrict the application of the prohibition under section 302(a)(1) of the Trade Agreements Act of 1979.

"(g)(1) For purposes of this section with respect to construction services, a contractor or subcontractor is owned or controlled directly or indirectly by citizens or nationals of a foreign country if—

"(A) 50 percent or more of the voting stock of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

"(B) the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of the foreign country;

"(C) 50 percent or more of the voting stock of the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

"(D) the case of a corporation—

"(i) the number of its directors necessary to constitute a quorum are citizens or nationals of the foreign country; or

"(ii) the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

"(E) in the case of a contractor or subcontractor who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraph (A) through (D) of this paragraph.

"(2)(A) For purposes of this section, except as provided in paragraph (1), a determination of whether a contractor or subcontractor is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country shall be made in accordance with policy guidance prescribed by the Administrator for Federal Procurement Policy after conducting one or more public hearings at which interested parties may present comments. Sections 556 and 557 of title 5, United States Code, shall not apply to the conduct of any such hearing.

"(B) The Administrator shall include in the policy guidance prescribed under subparagraph (A) definitions, procedures, standards, and rules that, to the extent the Administrator considers appropriate and consistent with the applicability of such policy guidance to all services (other than construction services), is the same as or similar to the definitions, procedures, standards, and rules that the Administrator has developed and issued for the administration of section 109 of the Treasury, Postal Service, and General Government Appropriations Act, 1988 (101 Stat. 1329-434).

"(C) The policy guidance required by subparagraph (A) shall be prescribed not later than 180 days after the date of enactment of this subsection.

"(3)(A) The Administrator for Federal Procurement Policy shall conduct an assessment of the current rules under this Act for making determinations of country of origin and alternatives to such rules. Such assessment shall identify and evaluate (i) reasonable alternatives to such rules of origin, including one or more alternative rules that require a determination on the basis of total cost, and (ii) the specific cost factors that should be included in determining total cost.

"(B) In conducting the analysis, the Administrator shall consult and seek comment from representatives of United States labor and business, other interested United States persons, and other Federal agencies. The Administrator shall hold public hearings for the purpose of obtaining such comment, and a transcript of such hearings shall be appended to the report required by subparagraph (C).

"(C) A report on the results of the analysis shall be submitted to the appropriate committees of the House of Representatives and to the Committee on Governmental Affairs and other appropriate committees of the Senate not later than 18 months after the date of enactment of this subsection. Such report shall include proposed policy guidance or any recommended legislative changes on the factors to be used in making determinations of country of origin.

"(h) As used in this section—

"(1) the term 'Agreement' means the Agreement on Government Procurement as defined in section 308(1) of the Trade Agreements Act of 1979;

"(2) the term 'signatory' means a party to the Agreement; and

"(3) the term 'eligible product' has the meaning given such term by section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)).".

SEC. 7003. PROCEDURES TO PREVENT GOVERNMENT PROCUREMENT DISCRIMINATION.

Section 305 of the Trade Agreements Act of 1979 (19 U.S.C. 2515) is amended by adding at the end thereof the following:

"(d) 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 (f)(5) and (g)(3)) any countries, other than least developed countries, that—

"(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;

"(B)(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 (1), the President shall—

"(A) use the requirements of the Agreement, 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 (1) 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 (1), the following:

"(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement 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 242(a) of the Trade Expansion Act of 1962, and from United States businesses in the United States and in countries that are signatories to the Agreement 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 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 (f) or (g) of this section.

"(e) CONSULTATION.—No later than the date the annual report is submitted under subsection (d)(1), 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 or the elimination of their discriminatory procurement practices unless the country is identified as discriminatory pursuant to section 305(d)(1) in the preceding annual report.

"(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF THE AGREEMENT.—

"(1) INITIATION OF DISPUTE SETTLEMENT PROCEDURES.—If, within 60 days after the annual report is submitted under subsection (d)(1), a signatory country identified pursuant to subsection (d)(1)(A) has not complied with the Agreement, 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 section 305(d)(1) 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 4 of the Act of March 3, 1933, 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 301(a) of this Act.

"(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 301(a) of this Act, and remove that country from the report under subsection (d)(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.

"(g) PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.—

"(1) IMPOSITION OF SANCTIONS.—If, within 60 days after the annual report is submitted under subsection (d)(1), 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 4 of the Act of March 3, 1933, 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 (d)(1) at such time as the President determines that the country has eliminated the discrimination identified pursuant to subsection (d)(2)(B) or (C).

"(h) LIMITATIONS ON IMPOSING SANCTIONS.—

"(1) AVOIDING ADVERSE IMPACT ON COMPETITION.—The President shall not take any action under subsection (f) or (g) 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 242(a) of the Trade Expansion Act of 1962 and the advice of United States businesses and other interested parties.

"(i) RENEGOTIATION TO SECURE FULL AND OPEN COMPETITION.—The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement 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).

"(j) FEDERAL REGISTER NOTICES OF ACTIONS.—

"(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 (f)(2);

"(B) any sanction imposed under subsection (f)(3) or (g)(1);

"(C) any withholding, modification, or restriction of any sanction under subsection (f)(4) or (g)(2); and

"(D) the termination of any sanction under subsection (f)(5) or (g)(3).

"(2) PUBLICATION OF DETERMINATIONS LIFTING SANCTIONS.—A notice describing the termination of any sanction under subsection (f)(5) or (g)(3) shall include a copy of the President's determination under such subsection.

"(k) GENERAL REPORT ON ACTIONS UNDER THIS SECTION.—

"(1) ADVICE TO THE CONGRESS.—The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the 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 (e), (f), and (g) 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. 7004. SUNSET PROVISION.

The amendments made by this title shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979, and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.

SEC. 7005. CONFORMING AMENDMENTS.

(a) DEFINITION OF FEDERAL AGENCY.—The first section of the Act of March 3, 1933 (41 U.S.C. 10c), is amended—

(1) by striking out the period at the end of paragraph (b) and inserting a semicolon; and

(2) by adding at the end thereof the following:

"(c) The term 'Federal agency' has the meaning given such term by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C 472), which includes the Departments of the Army, Navy, and Air Force.

(b) AMENDMENTS TO SECTION 2.—Section 2 of such Act (41 U.S.C. 10a) is amended by striking out "department or independent establishment" and inserting "Federal agency".

(c) AMENDMENTS TO SECTION 3.—Section 3 of such Act (41 U.S.C. 10b) is amended—

(1) by striking out "department or independent establishment" in such subsection and inserting "Federal agency"; and

(2) by striking out "department, bureau, agency, or independent establishment" in subsection (b) and inserting "Federal agency".

(d) ADDITIONAL CONFORMING AMENDMENTS.—Section 633 of the Act of October 29, 1949 (41 U.S.C. 10d) is amended by striking out "department or independent establishment" and inserting "Federal agency".

(e) SECTION 301 WAIVER AUTHORITY.—Section 301 of the Trade Agreements Act of 1979 is amended by adding at the end thereof the following:

"(d) LIMITATIONS ON WAIVER AUTHORITY NOT EFFECTIVE UNLESS PROVISION AMENDED.—The authority of the President under subsection (a) to waive any laws, regulation, procedure, or practice shall be effective notwithstanding any other provision of law hereafter enacted (excluding the provisions of and amendments made by the Buy American Act of 1988) unless such other provision specifically refers to and amends this section.".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect upon enactment.

TITLE VIII—SMALL BUSINESS

SEC. 8001. SHORT TITLE.

This title may be cited as the "Small Business International Trade and Competitiveness Act".

SEC. 8002. DECLARATION OF POLICY.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by redesignating subsections (b) through (e) as subsections (c) through (f), respectively, and by inserting after subsection (a) the following:

"(b)(1) It is the declared policy of the Congress that the Federal Government, through the Small Business Administration, acting in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this Act, to increase their ability to compete in international markets by—

"(A) enhancing their ability to export;

"(B) facilitating technology transfers;

"(C) enhancing their ability to compete effectively and efficiently against imports;

"(D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;

"(E) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and

"(F) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

"(2) The Congress recognizes that the Department of Commerce is the principal Federal agency for trade development and export promotion and that the Department of Commerce and the Small Business Administration work together to advance joint interests. It is the purpose of this Act to enhance, not alter, their respective roles.".

SEC. 8003. CHANGES IN EXISTING SMALL BUSINESS ADMINISTRATION INTERNATIONAL TRADE OFFICE.

Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"(b) The Office, working in close cooperation with the Department of Commerce and other relevant Federal agencies, Small Business Development Centers engaged in export promotion efforts, regional and local Administration offices, the small business community, and relevant state and local export promotion programs, shall—

"(1) assist in developing a distribution network for existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs through use of the Administration's regional and local offices and the Small Business Development Center network;

"(2) assist in the aggressive marketing of these programs and the dissemination of marketing information, including computerized marketing data, to the small business community; and

"(3) give preference in hiring or approving the transfer of any employee into the Office or to a position described in paragraph (8) below to otherwise qualified applicants who are fluent in a language in addition to English. Such employees shall accompany foreign trade missions if designated by the director of the Office and shall be available as needed to translate documents, interpret conversations and facilitate multilingual transactions including providing referral lists for translation services if required.";

(2) in subsection (c), as redesignated, by redesignating paragraphs (1) through (3) as (6) through (8), respectively, and by inserting the following before paragraph (6), as redesignated:

"(1) in cooperation with the Department of Commerce, other relevant agencies, regional and local Administration offices, the Small Business Development Center network, and State programs, develop a mechanism for (A) identifying sub-sectors of the small business community with strong export potential; (B) identifying areas of demand in foreign markets; (C) prescreening foreign buyers for commercial and credit purposes; and (D) assisting in increasing international marketing by disseminating relevant information regarding market leads, linking potential sellers and buyers, and catalyzing the formation of joint ventures, where appropriate;

"(2) in cooperation with the Department of Commerce, actively assist small businesses in the formation and utilization of export trading companies, export management companies and research and development pools authorized under section 9 of this Act;

"(3) work in conjunction with other Federal agencies, regional and local offices of the Administration, the Small Business Development Center network, and the private sector to identify and publicize existing translation services, including those available through colleges and universities participating in the Small Business Development Center Program;

"(4) work closely with the Department of Commerce and other relevant Federal agencies to—

"(A) collect, analyze and periodically update relevant data regarding the small business share of United States exports and the nature of state exports (including the production of Gross State Produce figures) and disseminate that data to the public and to Congress;

"(B) make recommendations to the Secretary of Commerce and to Congress regarding revision of the SIC codes to encompass industries currently overlooked and to create SIC codes for export trading companies and export management companies;

"(C) improve the utility and accessibility of existing export promotion programs for small businesses; and

"(D) increase the accessibility of the Export Trading Company contact facilitation service;

"(5) make available to the small business community information regarding conferences on exporting and international trade sponsored by the public and private sector."; and

(3) by adding after subsection (c), as redesignated, the following new subsections:

"(d) The Office shall work in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant Federal agencies, and the States to develop a program through which export specialists in the regional offices of the Administration, regional and local loan officers, and Small Business Development Center personnel can facilitate the access of small businesses to relevant export financing programs of the Export-Import Bank of the United States and to export and pre-export financing programs available from the Administration and the private sector. To accomplish this goal, the Office shall work in cooperation with the Export-Import Bank and the small business community, including small business trade associations, to—

"(1) aggressively market existing Administration export financing and pre-export financing programs;

"(2) identify financing available under various Export-Import Bank programs, and

aggressively market those programs to small businesses;

"(3) assist in the development of financial intermediaries and facilitate the access of those intermediaries to existing financing programs;

"(4) promote greater participation by private financial institutions, particularly those institutions already participating in loan programs under this Act, in export finance; and

"(5) provide for the participation of appropriate Administration personnel in training programs conducted by the Export-Import Bank.

"(e) The Office shall—

"(1) work in cooperation with other Federal agencies and the private sector to counsel small businesses with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws; and

"(2) work with the Department of Commerce, the Office of the United States Trade Representative, and the International Trade Commission to increase access to trade remedy proceedings for small businesses.

"(f) The Office shall report to the Committees on Small Business of the House of Representatives and the Senate on a annual basis as to its progress in implementing the requirements under this section.

"(g) The Office, in cooperation, where appropriate, with the division of Economic Research of the Office of Advocacy, and with other Federal agencies, shall undertake studies regarding the following issues and shall report to the Committees on Small Business of the House of Representatives and the Senate, and to other relevant Committees of the House and Senate within 6 months after the date of enactment of the Small Business International Trade and Competitiveness Act with specific recommendations on—

"(1) the viability and cost of establishing an annual, competitive small business export incentive program similar to the Small Business Innovation Research program and alternative methods of structuring such a program;

"(2) methods of streamlining trade remedy proceedings to increase access for, and reduce expenses incurred by, smaller firms;

"(3) methods of improving the current small business foreign sales corporation tax incentives and providing small businesses with greater benefits from this initiative;

"(4) methods of identifying potential export markets for United States small businesses; maintaining and disseminating current foreign market data; and devising a comprehensive export marketing strategy for United States small business goods and services, and shall include data on the volume and dollar amount of goods and services, identified by type, imported by United States trading partners over the past 10 years; and

"(5) the results of a survey of major United States trading partners to identify the domestic policies, programs and incentives, and the private sector initiatives, which exist to encourage the formation and growth of small business.".

SEC. 8004. AUTHORIZATION OF APPROPRIATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631) is amended by adding the following at the end of subsection (z): "There are hereby authorized to be appropriated to the Administration for each of fiscal years 1988 and 1989, $3,500,000 to carry out the provisions of section 22 of this Act and section 8011 of the Small Business International Trade and Competitiveness Act, of which $350,000 is authorized to reimburse volunteers in the Service Corps of Retired Executives for their expenses in performing on-site counselling to actual or potential small business exporters, in participating in training sessions for such small businesses, and in preparing materials for use at such training sessions or during counselling.".

SEC. 8005. EXPORT FINANCING PROVIDED BY THE ADMINISTRATION.

Section 7(a)(14) of the Small Business Act (15 U.S.C. 636(a)(14)) is amended to read as follows:

"(14)(A) The Administration under this subsection may provide extensions and revolving lines of credit for export purposes and for pre-export financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. No such extension or revolving line of credit may be made for a period or periods exceeding 18 months. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable.

"(B) When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

"(C) The Administration shall aggressively market its export financing program to small businesses.".

SEC. 8006. SMALL BUSINESS DEVELOPMENT CENTERS.

(a) AUTHORIZATION OF APPROPRIATION.—Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding the following at the end of subsection (z): "There are hereby authorized to be appropriated to the Administration for each of the fiscal years 1988 and 1989, $5,000,000 to carry out the provisions of section 21(a)(6).".

(b) SBDC INFORMATION DISSEMINATION AND SERVICE DELIVERY.—Section 21 of the Small Business Act (15 U.S.C. 648) is amended—

(1) in subsection (a)(1), by inserting after "enterprises;" the following: "management and technical assistance regarding small business participation in international markets, export promotion and technology transfer;";

(2) in subsection (a), by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively, and by inserting the following after paragraph (1):

"(2) The Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the Department of Commerce, appropriate Federal, State and local agencies and the small business community to serve as an active information dissemination and service delivery mechanism for existing trade promotion, trade finance, trade adjustment, trade remedy and trade data collection programs of particular utility for small businesses.";

(3) by adding at the end of subsection (a) the following new paragraph:

"(6) Any applicant which is funded by the Administration as a Small Business Development Center may apply for an additional grant to be used solely to assist—

"(A) with the development and enhancement of exports by small business concerns; and

"(B) in technology transfer,

as provided under subparagraphs (B) through (G) of subsection (c)(3). Applicants for such additional grants shall comply with all of the provisions of this section, including providing matching funds, except that funding under this paragraph shall be effective for any fiscal year to the extent provided in advance in appropriations Acts and shall be in addition to the dollar program limitations specified in paragraphs (4) and (5). No recipient of funds under this paragraph shall receive a grant which would exceed its pro rata share of a $15,000,000 program based upon the populations to be served by the Small Business Development Center as compared to the total population of the United States. The minimum amount of eligibility for any State shall be $100,000.";

(4) in subsection (c)(3), by striking subparagraph (B) and by inserting the following new subparagraph (B):

"(B) assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small businesses, including—

"(i) working to increase the access of small businesses to the capabilities of automated flexible manufacturing systems;

"(ii) working through existing networks and developing new networks for technology transfer that encourage partnership between the small business and academic communities to help commercialize university-based research and development and introduce university-based engineers and scientists to their counterparts in small technology-based firms; and

"(iii) exploring the viability of developing shared production facilities, under appropriate circumstances;";

(5) in subsection (c)(3), by redesignating subparagraphs (C) through (H) as subparagraphs (H) through (M), respectively, and by inserting the following new subparagraphs after subparagraph (B):

"(C) in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small businesses in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business firms and prescreened foreign buyers, assisting small businesses to participate in international trade shows, assisting small businesses in obtaining export financing, and facilitating the development or reorientation of marketing and production strategies; where appropriate, the Small Business Development Center may work in cooperation with the State to establish a State international trade center for these purposes;

"(D) assisting small businesses in developing and implementing marketing and production strategies that will enable them to better compete within the domestic market;

"(E) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small businesses;

"(F) working closely with the small business community, small business consultants, State agencies, universities and other appropriate groups to make translation services more readily available to small business firms doing business, or attempting to develop business, in foreign markets;

"(G) in providing assistance under this subsection, applicants shall cooperate with

the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the CIMS system;";

(6) in subsection (c), by adding the following new paragraphs:

"(5) In any State (A) in which the Administration has not made a grant pursuant to paragraph (1) of subsection (a), or (B) in which no application for a grant has been made by a Small Business Development Center pursuant to paragraph (6) of such subsection within 60 days after the effective date of any grant under paragraph (a)(1) to such center, the Administration may make grants to a non-profit entity in that State to carry out the activities specified in paragraph (6) of subsection (a). Any such applicants shall comply with the matching funds requirement of paragraph (4) of subsection (a). Such grants shall be effective for any fiscal year only to the extent provided in advance in appropriations Acts, and each State shall be limited to the pro rata share provisions of paragraph (6) of subsection (a).

"(6) In performing the services identified in paragraph (3), the Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

"(7) The Deputy Associate Administrator of the Small Business Development Center program, in consultation with the Small Business Development Centers, shall develop and implement an information sharing system which will—

"(A) allow Small Business Development Centers participating in the program to exchange information about their programs; and

"(B) provide information central to technology transfer."; and

(7) by redesignating subsections (d) through (k) as subsections (e) through (l), respectively, and inserting the following new subsection after subsection (c):

"(d) Where appropriate, the Small Business Development Centers shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small businesses located within the State. This plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and any other appropriate measures directed at improving the export performance of small businesses within the State.".

SEC. 8007. CAPITAL FORMATION.

(a) LOAN LIMITATIONS.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) by striking "and" at the end of clause (i) of paragraph (2)(B) and by adding after clause (ii) the following new clauses:

"(iii) not less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and is less than $1,176,470; and

"(iv) less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and exceeds $1,176,470;";

(2) by amending paragraph (3) to read as follows:

"(3) No loan shall be made under this subsection—

"(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $750,000, except as provided in subparagraph (B);

"(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this Act would exceed $1,000,000, such amount to be in addition to any financing solely for working capital, supplies, or revolving lines of credit for export purposes up to a maximum of $250,000; and

"(C) if effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed $350,000.";

(3) by adding the following new paragraphs after paragraph (15):

"(16)(A) The Administration may guarantee loans under this paragraph to assist any eligible small business concern in an industry engaged in or adversely affected by international trade in the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade, if the Administration determines that the appropriate upgrading of plant and equipment will allow the concern to improve its competitive position. Each such loan shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan. The lender shall agree to sell the loan in the secondary market as authorized in sections 5(f) and 5(g) of this Act within 180 days of the date of disbursement.

"(B) A small business concern shall be considered to be engaged in or adversely affected by international trade for purposes of this provision if such concern is, as determined by the Administration in accordance with regulations that it shall develop—

"(i) in a position to significantly expand existing export markets or develop new export markets; or

"(ii) adversely affected by import competition in that it is—

"(I) confronting increased direct competition with foreign firms in the relevant market; and

"(II) can demonstrate injury attributable to such competition.

"(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection."; and

(4) by redesignating the existing paragraph (16) as paragraph (18).

(b) DEVELOPMENT COMPANY LIMITS.—Section 502(2) of the Small Business Investment Act of 1985 (15 U.S.C. 636(a)(3)) is amended by striking "$500,000" and by inserting in lieu thereof "$750,000".

(c) REPORT.—The Administrator of the Small Business Administration shall report to the Committees on Small Business of the House of Representatives and the Senate within 6 months after the date of enactment of this title as to the viability of creating cooperative Federal-State guarantee programs, particularly for purposes of export financing, to encourage States to coinsure Federal loans, thus permitting the Federal Government to reduce its exposure.

SEC. 8008. SMALL BUSINESS INNOVATION RESEARCH.

Section 6 of Public Law 97-219, as amended by Public Law 99-443, is further amended by adding the following at the end of subsection (a): "The report also shall include the Comptroller General's recommendations as to the advisability of amending the Small Business Innovation Research program to—

"(1) increase each agency's share of research and development expenditures devoted to it by 0.25 per centum per year, until it is 3 per centum of the total extramural research and development funds, and targeting a portion of the increment at products with commercialization or export potential;

"(2) make the Small Business Innovation Research program permanent with a formal congressional review every 10 years, beginning in 1993;

"(3) allocate a modest but appropriate share of each agency's Small Business Innovation Research fund for administrative purposes for effective management, quality maintenance, and the elimination of program delays; and

"(4) include within the Small Business Innovation and Research program all agencies expending between $20,000,000 and $100,000,000 in extramural research and development funds annually.".

SEC. 8009. GLOBALIZATION OF PRODUCTION.

Within one year after the date of enactment of this Act, the Administrator of the Small Business Administration shall submit a written report to the Committees on Small Business of the House of Representatives and the Senate, prepared by the Administration in conjunction with the Bureau of Census and in cooperation with other relevant agencies, that would—

(1) analyze to the extent possible the effect of increased outsourcing and other shifts in production arrangements on small firms, particularly manufacturing firms, within the United States subcontractor tier and to the extent that such data is not available determine methods by which such data may be collected;

(2) assess the impact of specific economic policies, including, but not limited to, procurement, tax and trade policies, in facilitating outsourcing and other international production arrangements; and

(3) make recommendations as to changes in government policy that would improve the competitive position of smaller United States subcontractors, including recommendations as to incentives which could be provided to larger corporations to maximize their use of United States subcontractors and assist these subcontractors in changing production and marketing strategies and in obtaining new business in domestic and foreign markets.

SEC. 8010. SMALL BUSINESS TRADE REMEDY ASSISTANCE.

Not later than December 1, 1988, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Governmental Affairs and the Committee on Small Business of the Senate, as well as to other appropriate committees of the Senate, and to the Committee on Small Business and the Committee on Ways and Means of the House of Representatives on the costs incurred by small businesses in pursuing rights and remedies under the trade laws. Such report shall include an analysis of—

(1) the costs incurred by small businesses (and trade associations whose membership is primarily small business) in pursuing investigations under the trade remedy laws, including—

(A) antidumping investigations and proceedings under title VII of the Tariff Act of 1930;

(B) countervailing duty investigations and proceedings under section 303 or title VII of the Tariff Act of 1930;

(C) unfair trade practice investigations under section 337 of the Tariff Act of 1930;

(D) investigations under chapter 1 of title III of the Tariff Act of 1974;

(E) import relief investigations under chapter 1 of title II of the Trade Act of 1974;

(F) market disruption investigations under section 406 of the Trade Act of 1974; and

(G) national security relief investigations under section 232 of the Trade Expansion Act of 1962;

(2) the extent of assistance and information provided by the Trade Remedy Assistance Office of the United States International Trade Commission;

(3) the ability of small businesses to generate the information and resources needed for such investigations; and

(4) the costs and benefits to the Federal Government of either—

(A) providing reimbursement to small businesses for legal expenses incurred in pursuing trade remedies; or

(B) providing direct legal assistance to small businesses.

SEC. 8011. NATIONAL SEMINAR ON SMALL BUSINESS EXPORTS.

(a) SEMINAR.—The Administration shall conduct a National Seminar on Small Business Exports within one year following enactment of this Act in order to develop recommendations designed to stimulate exports from small companies. The Seminar shall build upon the information collected by the Administration through previously conducted regional small business trade conferences.

(b) ASSISTANCE BY EXPERTS.—For the purpose of ascertaining facts and developing policy recommendations concerning the expansion of United States exports from small companies the Seminar shall bring together individuals who are experts in the fields of international trade and small business development and representatives of small businesses, associations, the labor community, academic institutions, and Federal, State and local governments.

(c) RECOMMENDATIONS CONCERNING UTILITY OF INTERNATIONAL CONFERENCE.—The Seminar shall specifically consider the utility of, and make recommendations regarding, a subsequent International Conference on Small Business and Trade that would—

(1) help establish linkages between United States small business owners and small business owners in foreign countries;

(2) enable United States small business owners to learn how others organize themselves for exporting; and

(3) foster greater consideration of small business concerns in the GATT.

SEC. 8012. TRADE NEGOTIATIONS.

It is the sense of the Congress that the interests of the small business community have not been adequately represented in trade policy formulation and in trade negotiations. Therefore, it is the sense of the Congress that the Administrator of the Small Business Administration should be appointed as a member of the Trade Policy Committee and that the United States Trade Representative should consult with the Small Business Administration and its Office of Advocacy in trade policy formulation and in trade negotiations.

Further, it is the sense of the Congress that the United States Trade Representative would better serve the needs of the small business community with full-time staff assistance with responsibilities for small business trade issues.

Further, it is the sense of the Congress that the United States Trade Representative should appoint a special trade assistant for small business.

SEC. 8013. PROMULGATION OF REGULATIONS.

Notwithstanding any law, rule, or regulation, the Small Business Administration shall promulgate final regulations to carry out the provisions of this title within six months after the date of enactment of this title.

SEC. 8014. EFFECTIVE DATE.

This title shall become effective on the date of its enactment.

TITLE IX—PATENTS

Subtitle A—PROCESS PATENTS

SEC. 9001. SHORT TITLE.

This subtitle may be cited as the "Process Patent Amendments Act of 1988".

SEC. 9002. RIGHTS OF OWNERS OF PATENTED PROCESSES.

Section 154 of title 35, United States Code, is amended by inserting after "United States" the following: "and, if the invention is a process, of the right to exclude others from using or selling throughout the United States, or importing into the United States, products made by that process,".

SEC. 9003. INFRINGEMENT FOR IMPORTATION, USE, OR SALE.

Section 271 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(g) Whoever without authority imports into the United States or sells or uses within the United States a product which is made by a process patented in the United States shall be liable as an infringer, if the importation, sale, or use of the product occurs during the term of such process patent. In an action for infringement of a process patent, no remedy may be granted for infringement on account of the noncommercial use or retail sale of a product unless there is no adequate remedy under this title for infringement on account of the importation or other use or sale of that product. A product which is made by a patented process will, for purposes of this title, not be considered to be so made after—

"(1) it is materially changed by subsequent processes; or

"(2) it becomes a trivial and nonessential component of another product.".

SEC. 9004. DAMAGES FOR INFRINGEMENT.

(a) LIMITATIONS AND OTHER REMEDIES.—Section 287 of title 35, United States Code, is amended—

(1) in the section heading by striking "Limitation on damages" and inserting "Limitation on damages and other remedies";

(2) by inserting "(a)" before "Patentees"; and

(3) by adding at the end the following:

"(b)(1) An infringer under section 271(g) shall be subject to all the provisions of this title relating to damages and injunctions except to the extent those remedies are modified by this subsection or section 9006 of the Process Patent Amendments Act of 1988. The modifications of remedies provided in this subsection shall not be available to any person who—

"(A) practiced the patented process;

"(B) owns or controls, or is owned or controlled by, the person who practiced the patented process; or

"(C) had knowledge before the infringement that a patented process was used to make the product the importation, use, or sale of which constitutes the infringement.

"(2) No remedies for infringement under section 271(g) of this title shall be available with respect to any product in the possession of, or in transit to, the person subject to liability under such section before that person had notice of infringement with respect to that product. The person subject to liability shall bear the burden of proving any such possession or transit.

"(3)(A) In making a determination with respect to the remedy in an action brought for infringement under section 271(g), the court shall consider—

"(i) the good faith demonstrated by the defendant with respect to a request for disclosure,

"(ii) the good faith demonstrated by the plaintiff with respect to a request for disclosure, and

"(iii) the need to restore the exclusive rights secured by the patent.

"(B) For purposes of subparagraph (A), the following are evidence of good faith:

"(i) a request for disclosure made by the defendant;

"(ii) a response within a reasonable time by the person receiving the request for disclosure; and

"(iii) the submission of the response by the defendant to the manufacturer, or if the manufacturer is not known, to the supplier, of the product to be purchased by the defendant, together with a request for a written statement that the process claimed in any patent disclosed in the response is not used to produce such product.

The failure to perform any acts described in the preceding sentence is evidence of absence of good faith unless there are mitigating circumstances. Mitigating circumstances include the case in which, due to the nature of the product, the number of sources for the product, or like commercial circumstances, a request for disclosure is not necessary or practicable to avoid infringement.

"(4)(A) For purposes of this subsection, a 'request for disclosure' means a written request made to a person then engaged in the manufacture of a product to identify all process patents owned by or licensed to that person, as of the time of the request, that the person then reasonably believes could be asserted to be infringed under section 271(g) if that product were imported into, or sold or used in, the United States by an unauthorized person. A request for disclosure is further limited to a request—

"(i) which is made by a person regularly engaged in the United States in the sale of the same type of products as those manufactured by the person to whom the request is directed, or which includes facts showing that the person making the request plans to engage in the sale of such products in the United States;

"(ii) which is made by such person before the person's first importation, use, or sale of units of the product produced by an infringing process and before the person had notice of infringement with respect to the product; and

"(iii) which includes a representation by the person making the request that such person will promptly submit the patents identified pursuant to the request to the manufacturer, or if the manufacturer is not known, to the supplier, of the product to be purchased by the person making the request, and will request from that manufacturer or supplier a written statement that none of the processes claimed in those patents is used in the manufacture of the product.

"(B) In the case of a request for disclosure received by a person to whom a patent is licensed, that person shall either identify the

patent or promptly notify the licensor of the request for disclosure.

"(C) A person who has marked, in the manner prescribed by subsection (a), the number of the process patent on all products made by the patented process which have been sold by that person in the United States before a request for disclosure is received is not required to respond to the request for disclosure. For purposes of the preceding sentence, the term 'all products' does not include products made before the effective date of the Process Patent Amendments Act of 1988.

"(5)(A) For purposes of this subsection, notice of infringement means actual knowledge, or receipt by a person of a written notification, or a combination thereof, of information sufficient to persuade a reasonable person that it is likely that a product was made by a process patented in the United States.

"(B) A written notification from the patent holder charging a person with infringement shall specify the patented process alleged to have been used and the reasons for a good faith belief that such process was used. The patent holder shall include in the notification such information as is reasonably necessary to explain fairly the patent holder's belief, except that the patent holder is not required to disclose any trade secret information.

"(C) A person who receives a written notification described in subparagraph (B) or a written response to a request for disclosure described in paragraph (4) shall be deemed to have notice of infringement with respect to any patent referred to in such written notification or response unless that person, absent mitigating circumstances—

"(i) promptly transmits the written notification or response to the manufacturer or, if the manufacturer is not known, to the supplier, of the product purchased or to be purchased by that person; and

"(ii) receives a written statement from the manufacturer or supplier which on its face sets forth a well grounded factual basis for a belief that the identified patents are not infringed.

"(D) For purposes of this subsection, a person who obtains a product made by a process patented in the United States in a quantity which is abnormally large in relation to the volume of business of such person or an efficient inventory level shall be rebuttably presumed to have actual knowledge that the product was made by such patented process.

"(6) A person who receives a response to a request for disclosure under this subsection shall pay to the person to whom the request was made a reasonable fee to cover actual costs incurred in complying with the request, which may not exceed the cost of a commercially available automated patent search of the matter involved, but in no case more than $500.".

(b) TECHNICAL AMENDMENT.—The item relating to section 287 of title 35, United States Code, in the table of sections for chapter 29 of such title is amended to read as follows:

"287. Limitation on damages and other remedies; marking and notice.".

SEC. 9005. PRESUMPTION IN CERTAIN INFRINGEMENT ACTIONS.

(a) PRESUMPTION THAT PRODUCT MADE BY PATENTED PROCESS.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following:

"§295. Presumption: Product made by patented process

"In actions alleging infringement of a process patent based on the importation, sale, or use of a product which is made from a process patented in the United States, if the court finds—

"(1) that a substantial likelihood exists that the product was made by the patented process, and

"(2) that the plaintiff has made a reasonable effort to determine the process actually used in the production of the product and was unable so to determine,

the product shall be presumed to have been so made, and the burden of establishing that the product was not made by the process shall be on the party asserting that it was not so made.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, is amended by adding after the item relating to section 294 the following:

"295. Presumption: Product made by patented process.".

SEC. 9006. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this subtitle take effect 6 months after the date of enactment of this Act and, subject to subsections (b) and (c), shall apply only with respect to products made or imported after the effective date of the amendments made by this subtitle.

(b) EXCEPTIONS.—The amendments made by this subtitle shall not abridge or affect the right of any person or any successor in business of such person to continue to use, sell, or import any specific product already in substantial and continuous sale or use by such person in the United States on January 1, 1988, or for which substantial preparation by such person for such sale or use was made before such date, to the extent equitable for the protection of commercial investments made or business commenced in the United States before such date. This subsection shall not apply to any person or any successor in business of such person using, selling, or importing a product produced by a patented process that is the subject of a process patent enforcement action commenced before January 1, 1987, before the International Trade Commission, that is pending or in which an order has been entered.

(c) RETENTION OF OTHER REMEDIES.—The amendments made by this subtitle shall not deprive a patent owner of any remedies available under subsections (a) through (f) of section 271 of title 35, United States Code, under section 337 of the Tariff Act of 1930, or under any other provision of law.

SEC. 9007. REPORTS TO CONGRESS.

(a) CONTENTS.—The Secretary of Commerce shall, not later than the end of each 1-year period described in subsection (b), report to the Congress on the effect of the amendments made by this subtitle on those domestic industries that submit complaints to the Department of Commerce, during that 1-year period, alleging that their legitimate sources of supply have been adversely affected by the amendments made by this subtitle.

(b) WHEN SUBMITTED.—A report described in subsection (a) shall be submitted with respect to each of the five 1-year periods which occur successively beginning on the effective date of the amendments made by this subtitle and ending five years after that effective date.

Subtitle B—FOREIGN FILING

SEC. 9101. INCREASED EFFECTIVENESS OF PATENT LAW.

(a) SHORT TITLE.—This section may be cited as the "Patent Law Foreign Filing Amendments Act of 1988".

(b) FILING OF APPLICATIONS IN FOREIGN COUNTRIES.—(1) Section 184 of title 35, United States Code, is amended—

(A) in the third sentence by—

(i) striking out "inadvertently"; and

(ii) inserting "through error and without deceptive intent" after "filed abroad"; and

(B) by adding at the end thereof the following new paragraph:

"The scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the license is based is not, or was not, required to be made available for inspection under section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181. In any case in which a license is not, or was not, required in order to file an application in any foreign country, such subsequent modifications, amendments, and supplements may be made, without a license, to the application filed in the foreign country if the United States application was not required to be made available for inspection under section 181 and if such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require the United States application to have been made available for inspection under such section 181.".

(2) Section 185 of title 35, United States Code, is amended by inserting immediately before the period in the last sentence the following: ", unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title.".

(3) Section 186 of title 35, United States Code, is amended by inserting "willfully" after "whoever", the second place it appears.

(c) REGULATIONS.—The Commissioner of Patents and Trademarks shall prescribe such regulations as may be necessary to implement the amendments made by this section.

(d) EFFECTIVE DATE.—(1) Subject to paragraphs (2), (3), and (4) of this subsection, the amendments made by this section shall apply to all United States patents granted before, on, or after the date of enactment of this section, to all applications for United States patents pending on or filed after such date of enactment, and to all licenses under section 184 granted before, on, or after the date of enactment of this section.

(2) The amendments made by this section shall not affect any final decision made by a court or the Patent and Trademark Office before the date of enactment of this section with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

(3) No United States patent granted before the date of enactment of this section shall abridge or affect the right of any person or his successors in business who made, purchased, or used, prior to such date of enactment, anything protected by the patent, to continue the use of, or to sell to others to be

used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by this section and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this section, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment of this section, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before such date of enactment.

(4) The amendments made by this section shall not affect the right of any party in any case pending in court on the date of enactment of this section to have its rights or liabilities—

(A) under any patent before the court, or

(B) under any patent granted after such date of enactment which is related to the patent before the court by deriving priority rights under section 120 or 121 of title 35, United States Code, from a patent or an application for patent common to both patents,

determined on the basis of the substantive law in effect before the date of enactment of this section.

Subtitle C—PATENT TERM EXTENSION

SEC. 9201. PATENT TERM EXTENSION.

(a) GENERAL RULE.—Except as provided in subsection (b), the term of United States Patent number 3,674,836 issued for the drug Lopid shall be extended in accordance with section 9202 for 3 years and 6 months from the date of its expiration.

(b) CONDITIONS.—

(1) No extension of the term of the patent described in subsection (a) may be made unless there has been submitted for the drug Lopid a supplemental new drug application under section 505 of the Federal Food, Drug, and Cosmetic Act for the approval of an expansion of the permitted indications and usage in the labeling of the drug.

(2) If the Secretary of Health and Human Services makes a final determination, after the date of the enactment of this Act, disapproving the first supplemental new drug application submitted under section 505 of the Federal Food, Drug, and Cosmetic Act for the approval of an expansion of the permitted indications and usage in the labeling of the drug Lopid—

(A) no extension shall be granted for the term of the patent under subsection (a) if the final determination of disapproval is issued before the date the term of the patent is extended under subsection (a), and

(B) if an extension has been granted under subsection (a) before the final determination of disapproval is issued, the extension shall be terminated as of the date of such disapproval.

The Secretary shall promptly notify the Commissioner of Patents and Trademarks of such a disapproval.

SEC. 9202. PROCEDURE.

(a) NOTICE.—To receive the patent term extension under section 9201(a), the owner of record of the patent shall notify the Commissioner of Patents and Trademarks before January 4, 1989, of the identity of the supplemental new drug application required under section 9201(b)(1).

(b) EXTENSION.—On receipt of the notice under subsection (a), the Commissioner shall, in accordance with section 9201, promptly issue to the owner of record of the patent a certificate of extension, under seal, stating the fact and length of the extension and indicating that such extension is limited to the subject matter of claim 1 (insofar as claim 1 is needed to cover the compound described in claim 6 and additionally insofar as claim 1 is needed to cover the pharmaceutically acceptable salts of the compound described in claim 6) and claim 6 of the patent. Such certificate shall be recorded in the official file of the patent extended and such certificate shall be considered as part of the original patent, and an appropriate notice shall be published in the Official Gazette of the Patent and Trademark Office. If the extension of the term of the patent is to be terminated under section 9201(b), the Commissioner shall promptly issue a certificate of termination of extension, under seal, stating the fact that the patent term extension is terminated, effective on the date of the final determination that the supplemental new drug application under section 505 of the Federal Food, Drug, and Cosmetic Act was disapproved. Such certificate shall be recorded in the official file of the patent and such certificate shall be considered as a part of the original patent, and an appropriate notice shall be published in the Official Gazette of the Patent and Trademark Office.

TITLE X—OCEAN AND AIR TRANSPORTATION

Subtitle A—FOREIGN SHIPPING PRACTICES

SEC. 10001. SHORT TITLE.

This subtitle may be cited as the "Foreign Shipping Practices Act of 1988".

SEC. 10002. FOREIGN LAWS AND PRACTICES.

(a) DEFINITIONS.—For purposes of this section—

(1) "common carrier", "marine terminal operator", "non-vessel-operating common carrier", "ocean common carrier", "person", "shipper", "shippers' association", and "United States" have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702);

(2) "foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(3) "maritime services" means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(4) "maritime-related services" means intermodal operations, terminal operations, cargo solicitation, fowarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(5) "United States carrier" means an ocean common carrier which operates vessels documented under the laws of the United States; and

(6) "United States oceanborne trade" means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

(c) INVESTIGATIONS.—(1) Investigations under subsection (b) of this section may be initiated by the Commission on its own motion or on the petition of any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

(a) The Commission shall complete any such investigation and render a decision within 120 days after it is initiated, except that the Commission may extend such 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether a condition specified in subsection (b) of this section exists. Any notice providing such an extension shall clearly state the reasons for such extension.

(d) INFORMATION REQUESTS.—(1) In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission.

(2) In an investigation under subsection (b) of this section, the Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(3) Notwithstanding any other provision of law, the Commission may, in its discretion, determine that any information submitted to it in response to a request under this subsection, or otherwise, shall not be disclosed to the public.

(e) ACTION AGAINST FOREIGN CARRIERS.—(1) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in subsection (b) of this section exist, the commission shall take each action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(B) suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(C) suspension, in whole or in part, of the right of an ocean common carrier to operate

under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(D) a fee, not to exceed $1,000,000 per voyage.

(2) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this subsection.

(3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(f) ACTIONS UPON REQUEST OF THE COMMISSION.—Whenever the conditions specified in subsection (b) of this section are found by the Commission to exist, upon the request of the Commission—

(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(g) REPORT.—The Commission shall include in its annual report to Congress—

(1) a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in subsection (b) of this section being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset such conditions;

(4) any recommendations for additional legislation to offset such conditions; and

(5) a list of petitions filed under subsection (c) of this section that the Commission rejected, and the reasons for each such rejection.

(h) The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of section 13(b)(5) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(5)) or section 19(1)(b) of the Merchant Marine Act, 1920 (46 App. U.S.C. 876).

(i) Any rule, regulation or final order of the Commission issued under this section shall be reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28, United States Code.

SEC. 10003. MOBILE TRADE FAIRS.

(a) Section 212(B)(c) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122b(c)), is amended to read as follows:

"(c) In addition to any amounts appropriated to carry out trade promotion activities, the President may use foreign currencies owned by or owed to the United States to carry out this section.".

(b) For one year after the date of enactment of this Act, a vessel that is undergoing repair or retrofitting for use solely for mobile trade fair purposes is deemed to be out of commission under section 3302(e) of title 46, United States Code, during the repair or retrofitting.

Subtitle B—INTERNATIONAL AIR TRANSPORTATION

SEC. 10011. MAXIMUM PERIOD FOR TAKING ACTION WITH RESPECT TO COMPLAINTS.

Section 2(b)(2) of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. App. 1159b(b)(2)) is amended—

(1) in the third sentence by striking out "but in no event may" and all that follows through "180 days" and inserting in lieu thereof "but the aggregate period for taking action under this subsection may not exceed 90 days"; and

(2) by inserting after the third sentence the following new sentence; "However, if on the last day of such 90-day period, the Secretary finds that—

"(A) negotiations with the foreign government have progressed to a point that a satisfactory resolution of the complaint appears imminent;

"(B) no United States air carrier has been subject to economic injury by the foreign government or an instrumentality of the foreign government (including a foreign air carrier) as a result of the filing of the complaint; and

"(C) public interest requires additional time before the taking of action with respect to the complaint;

the Secretary may extend such 90-day period for not to exceed an additional 90 days.".

SEC. 10012. VIEWS OF THE DEPARTMENT OF COMMERCE AND OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

Section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. App. 1159b(b)) is amended—

(1) by redesignating paragraph (3), and any references thereto, as paragraph (4);

(2) by striking out the last sentence of paragraph (2); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) In considering any complaint, or in any proceedings under its own initiative, under this subsection, the Secretary shall—

"(A) solicit the views of the Department of State, the Department of Commerce, and the Office of the United States Trade Representative; and

"(B) provide any affected air carrier or foreign air carrier with reasonable notice and such opportunity to file written evidence and agrument as is consistent with acting on the complaint within the time limits set forth in this subsection."

SEC. 10013. REPORTING ON ACTIONS TAKEN WITH RESPECT TO COMPLAINTS.

Section 2 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. App. 1159b) is amended by adding at the end thereof the following new subsection:

"(e) Not later than the 30th day after taking action with respect to a complaint under this section, the Secretary of Transportation shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on actions that have been taken under this section with respect to the complaint.".

And the Senate agree to the same.

From the Committee on Ways and Means, for consideration of titles I, II, VIII, and XV and sections 704 and 906 of the House bill, and titles I, II, III (except sections 308 and 310), IV (except sections 412 through 415), V through VIII, IX (except sections 963, 967 through 972, 974, 975, and 977) of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
THOMAS J. DOWNEY,
DON J. PEASE,
MARTY RUSSO,
FRANK GUARINI,
ROBERT T. MATSUI,
JOHN J. DUNCAN,
BILL ARCHER,
GUY VANDER JAGT,

From the Committee on Ways and Means, for consideration of sections 321, 323, 363, 907 through 909 of the House bill, and title XXXVII and sections 308, 310, 412, 977, 2002, and 3871 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
THOMAS J. DOWNEY,
DON J. PEASE,
MARTY RUSSO,
RICHARD T. SCHULZE,

From the Committee on Ways and Means, for consideration of sections 613, 626, 627, 671 through 675, 681, 682, 691, and 692 of the House bill, and sections 974, 975, 2112, 2128, 2171, 2173 through 2175, 2191, 2193, and 2194 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
DON J. PEASE,
MARTY RUSSO,
ROBERT T. MATSUI,
WM. THOMAS,

From the Committee on Ways and Means, for consideration of sections 605 through 607, 611, and 663 of the House bill, and sections 2113, 2114, and 2136 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
ROBERT T. MATSUI,
WM. THOMAS,

From the Committee on Ways and Means, for consideration of title X of the House bill, and section 3911 of the Senate amendment, and modifications committed to conference:

SAM M. GIBBONS,
FRANK GUARINI,

From the Committee on Ways and Means, for consideration of sections 351, 901, and 902 of the House bill, and sections 968 through 972, 1030 through 1033, and 3811 through 3824 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
THOMAS J. DOWNEY,
BILL ARCHER,
RICHARD T. SCHULZE,

From the Committee on Agriculture, for consideration of title VI and sections 318 through 321 of the House bill, and title XXI (except sections 2178 through 2180A and 2185 through 2187) and sections 601, 602, 604, 605, 974, 975, and 4706 of the Senate

amendment, and modifications committed to conference:

K. DE LA GARZA,
GEORGE E. BROWN, JR.,
LEON E. PANETTA,
DAN GLICKMAN,
CHARLIE STENHOLM,
HAROLD L. VOLKMER,
PAT ROBERTS,
SID MORRISON,
STEVE GUNDERSON,
FRED GRANDY,

From the Committee on Agriculture, for consideration of section 308 of the Senate amendment, and modifications committed to conference:

K. DE LA GARZA,
GEORGE E. BROWN, JR.,
DAN GLICKMAN,
PAT ROBERTS,
SID MORRISON,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 126 (insofar as it would add new sections 311(g) (1) and (2) to the Trade Act of 1974), sections 401 through 427, and 431 through 452 of the House bill, and titles XIII and XVII and sections 108, 2008, 2012, and 2178 through 2180A of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
JOHN J. LAFALCE
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 322 of the House bill, and section 1106 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
ROBERT GARICA,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, from consideration of sections 341 and 344 of the House bill, and modifications committed to conference:

WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
JOHN J. LAFALCE,
CHARLES E. SCHUMER,
BRUCE A. MORRISON
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 428 of the House bill, and section 1506 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE VENTO,
DOUG BARNARD, JR.,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 461 through 471 of the House bill, and sections 3801 through 3809 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE F. VENTO,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 476 and 477 of the House bill, and sections 1101 through 1103 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
JOHN J. LAFALCE
BRUCE VENTO,
DOUG BEREUTER,
TOBY ROTH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 907 of the House bill, modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
BRUCE VENTO,
CHARLES E. SCHUMER,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 911 of the House bill, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 959 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
CHARLES E. SCHUMER,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 1026 and 1027 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,
TOBY ROTH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 1501 through 1504 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE VENTO,
DOUG BARNARD, JR.,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1805 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title XIX and section 2001 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
JOHN J. LAFALCE,
BRUCE VENTO,
CHARLES E. SCHUMER,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 313 of the House bill, and sections 1201 and 1203 of the Senate amendment, and modifications committed to conference:

WALTER E. FAUNTROY,
ROBERT GARCIA,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 326 of the House bill, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
ROBERT GARCIA,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 345 of the House bill, and modifications committed to conference:

MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 664 of the House bill, and sections 1801, 3903, and 3906 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 702 of the House bill, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 902, 905, and 912 of the House bill, and title XIV and sections 3811 through 3824, 3861 through 3867, and 4501 of the Senate amendment, and modifications committed to conference:

MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
J. ALEX MCMILLAN,
TOBY ROTH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1303 of the House bill, and modifications committed to conference:

MARY ROSE OAKAR,
WALTER E. FAUNTROY,
ROBERT GARCIA,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1105 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
ROBERT GARCIA,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1505 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE F. VENTO,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 3854 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE F. VENTO,

From the Committee on Foreign Affairs, for consideration of title III (except sections 322, 326, and 351) and sections 451, 601 through 612, 621 through 623, 625, 631 through 637, 641 through 651, 653, 663, 701, 903, 907, and 912 of the House bill, and titles X (except sections 1030 through 1033), XII, XVI, XVIII (except section 1801), XX (except sections 2001 and 2008), and XLVII and sections 311, 413 through 415, 958, 963 through 972, 977, 1104, 1304, 1504, 2111, 2113 through 2127, 2129, 2132 through 2136, 2138, 2139A through 2166, 2180B through 2182, 2184, 2192, 3851, 3871, 4501, and 4901 of the Senate amendment, and modifications committed to conference:

DANTE B. FASCELL,
DON BONKER,
DAN MICA,
HOWARD L. BERMAN
(except for section 331 of the House bill, and section 1020 of the Senate amendment),
MEL LEVINE
(except for sections 301 through 321, 323 through 325, 345, 601 through 612, 621 through 623, 625, 631 through 637, 641 through 651, 653, 663, and 912 of the House bill, and sections 311, 958, 968 through 972, 1802 through 1805, 1807 through 1809, 2002 through 2007, 2009 through 2012, 2111, 2113 through 2127, 2129, 2132 through 2136, 2138, 2139A through 2166, 2180B through 2182, 2192, 4501, and 4901, and titles XII and XLVII of the Senate amendment),
JAMES H. BILBRAY
(except for section 331 of the House bill, and section 1020 of the Senate amendment),
TOBY ROTH,
DOUGLAS BEREUTER,
JOHN MILLER
(except for section 331 of the House bill, and section 1020 and title XLVII of the Senate amendment),

From the Committee on Foreign Affairs, for consideration of section 331 of the House bill, and section 1020 of the Senate amendment:

HOWARD WOLPE,

From the Committee on Foreign Affairs, for consideration of section 325 of the House bill, and title XLVII and sections 311, 958, 968 through 972, 2002 through 2007, 2009 through 2012, and 4901 of the Senate amendment:

STEPHEN J. SOLARZ,

From the Committee on Foreign Affairs, for consideration of sections 318 through 321, 345, 601 through 612, 621 through 623, 625, 631 through 637, 641 through 651, 653, 663, and 912 of the House bill, and sections 2111, 2113 through 2127, 2129, 2132 through 2136, 2138, 2139A through 2166, 2180B through 2182, 2192, and 4501 of the Senate amendment:

SAM GEJDENSON,

From the Committee on Foreign Affairs, for consideration of title XLVII of the Senate amendment:

BENJAMIN A. GILMAN,

From the Committee on Foreign Affairs, for consideration of sections 322, 326, 351, 461 through 471, 664, 702, 703, 901, 902, 905, 1303 through 1306, and 1310 of the House bill, and title XIV and sections 308, 412, 1105, 1505, 1801, 3801 through 3824, 3854, 3902 through 3907, 3910, and 3912 of the Senate amendment, and modifications committed to conference:

DON BONKER,
DAN MICA
(except for sections 1303 through 1306 and 1310 of the House bill, and sections 3902 through 3907, 3910, and 3912 of the Senate amendment),
HOWARD L. BERMAN
(except for section 664 of the House bill, and sections 308 and 2178 through 2180A of the Senate amendment),
DOUG BEREUTER
(except for sections 1303 through 1306 and 1310 of the House bill, and sections 3902 through 3907, 3910, and 3912 of the Senate amendment),

From the Committee on Foreign Affairs, for consideration of section 664 of the House bill, and sections 308 and 2178 through 2180A of the Senate amendment:

SAM GEJDENSON,

From the Committee on Foreign Affairs, for consideration of sections 1303 through 1306 and 1310 of the House bill, and sections 3902 through 3907, 3910, and 3912 of the Senate amendment:

JAMES H. BILBRAY,
BILL BROOMFIELD,

From the Committee on Foreign Affairs, for consideration of sections 1030 through 1033 of the Senate amendment, and modifications committed to conference:

DANTE B. FASCELL,
DON BONKER,
DAN MICA,
WM. BROOMFIELD,
TOBY ROTH,

From the Committee on Energy and Commerce, for consideration of title II and section 703 of the House bill, and sections 901 through 913 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
MIKE SYNAR,
D.E. ECKART,
JIM SLATTERY,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
MATT RINALDO,
DON RITTER,

From the Committee on Energy and Commerce, for consideration of sections 104, 181, 183, 324, 701, 903, 904, 906, and 909 of the House bill, and title XVI and sections 1503, 1802, and 3851 through 3853 of the Senate amendment, and modifications committed to conference; for consideration of sections 121 and 124 of the House bill, and sections 306 and 307 of the Senate amendment, and modifications committed to conference, except for those matters relating to suspension, withdrawal, or prevention of trade agreement concessions or to imposition of duties or other import restrictions on goods; and for consideration of section 201 of the Senate amendment (insofar as it would add new sections 204(d)(1)(B)(ii) and 204(d)(2)(B) through (E) to the Trade Act of 1974), and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
JOHN BRYANT,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
MATT RINALDO,

From the Committee on Energy and Commerce, for the consideration of section 198 of the House bill, and sections 2185 through 2188 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
JOHN BRYANT,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
DAN COATS,

From the Committee on Energy and Commerce, for the consideration of sections 908, 910, and 911 of the House bill, and section 310 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
JOHN BRYANT,
NORMAN F. LENT,
MATT RINALDO,
DON RITTER,

From the Committee on Energy and Commerce, for consideration of sections 311 through 316, 345, 461 through 471, 901, 902, 905, 907, and 912 of the House bill, and titles XII (except section 1207) and XIV and sections 968 through 972, 1801, 1802, 3801 through 3824, and 4501 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
NORMAN F. LENT,
(except for sections 461-471 of the House bill and sections 3801-3809 of the Senate amendment),

From the Committee on Energy and Commerce, for consideration of section 331 of the House bill, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
NORMAN F. LENT,

From the Committee on Energy and Commerce, for consideration of section 702 of the House bill, and sections 1505 and 3854 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
NORMAN F. LENT,
MATT RINALDO,

From the Committee on Energy and Commerce, for consideration of sections 3861 through 3867 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
NORMAN F. LENT,
DON RITTER,

From the Committee on Education and Labor, for consideration of title V (except subtitle B) of the House bill, and titles XXIII through XXXII of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
DALE E. KILDEE,
PAT WILLIAMS,
JIM JEFFORDS,
BILL GOODLING,
TOM COLEMAN,

From the Committee on Education and Labor, for consideration of subtitle B of title V of the House bill, and title XXII of the Senate amendment (except the portion of section 2202 that would add new part B to title III of the Job Training Partnership Act), and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
W.L. CLAY,
MATTHEW G. MARTINEZ,
JIM JEFFORDS,
MARGE ROUKEMA,
STEVE GUNDERSON,

From the Committee on Education and Labor, for consideration of section 2202 of the Senate amendment (insofar as it would add new part B to title III of the Job Training Partnership Act), and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
W.L. CLAY,
MATTHEW G. MARTINEZ,
AUSTIN J. MURPHY,
JIM JEFFORDS,

From the Committee on Education and Labor, for consideration of section 904 of the House bill, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
JIM JEFFORDS,
BILL GOODLING,

From the Committee on the Judiciary, for consideration of title XIV and sections 166, and 171 through 173 of the House bill, and titles XXXIII through XXXVI and sections 201 (insofar as it would add new section 203(f) to the Trade Act of 1974), 401, 415, 416, 1107, 1806, 1908, and 1910 of the Senate amendment, and modifications committed to conference:

PETER W. RODINO, Jr.,
BOB KASTENMEIER,
DON EDWARDS,
WILLIAM J. HUGHES,
PAT SCHROEDER,
GEO. W. CROCKETT, Jr.,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,
HENRY J. HYDE,
DANIEL E. LUNGREN,

From the Committee on the Judiciary, for consideration of sections 872 and 873 of the House bill, and modifications committed to conference:

PETER W. RODINO, Jr.,
BOB KASTENMEIER,
DON EDWARDS,
WILLIAM J. HUGHES,
PAT SCHROEDER,
GEO. W. CROCKETT, Jr.,
BILL MCCOLLUM,
DANIEL E. LUNGREN,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on the Judiciary, for consideration of sections 326, 905, and 912 of the House bill, and titles XIV and XLVIII, and sections 1105 and 3861 through 3867 of the Senate amendment, and modifications committed to conference:

PETER W. RODINO, Jr.,
DON EDWARDS,
WILLIAM J. HUGHES,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on the Judiciary, for consideration of section 351 of the House bill, and modifications committed to conference:

BOB KASTENMEIER,
PAT SCHROEDER,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on the Judiciary, for consideration of section 701 of the House bill, and sections 1603 through 1605 of the Senate amendment, and modifications committed to conference:

PETER W. RODINO, Jr.,
WILLIAM J. HUGHES,
GEO. W. CROCKETT, Jr.,
BILL MCCOLLUM,

From the Committee on the Judiciary, for consideration of section 703(h) of the House bill, and modifications committed to conference:

PETER W. RODINO, Jr.,
WILLIAM J. HUGHES,
GEO. W. CROCKETT, Jr.,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on Government Operations, for consideration of titles X and XVI of the House bill, and title XLVIII of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS, Jr.,
STEVE NEAL,
BARRY FRANK,
BOB WISE,
FRANK HORTON,
ROBERT WALKER
(except for title XVI of the House bill, title XLVIII of the Senate amendment, and sections 5301 through 5303 of the Conference report,
WILLIAM F. CLINGER
(except for title XVI of the House bill, title XLVIII of the Senate amendment, and section 5301 through 5303 of the conference report),

From the Committee on Government Operations, for consideration of sections 461 through 471 of the House bill, and sections 1030 through 1033 and 3801 through 3809 of the Senate amendment, and modifications committed to conference:

JACK BROOKS
(except for the Competitiveness Policy Council provided for in sections 461 through 471 of the House bill, sections 3801 through 3809 of the Senate amendment, and sections 5201 through 5210 of the Conference Report),
JOHN CONYERS, Jr.,
STEVE NEAL,
FRANK HORTON
(except for the Competitiveness Policy Council provided for in sections 461 through 471 of the House bill, sections, 3801 through 3809 of the Senate amendment, and sections 5201 through 5210 of the conference report),

From the Committee on Merchant Marine and Fisheries, for consideration of title XI of the House bill, and title XLVI and section 2011 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
GLENN M. ANDERSON,
GERRY STUDDS,
DON BONKER,
WILLIAM J. HUGHES,
BOB DAVIS,
NORMAN F. LENT,
DON YOUNG,
NORMAN D. SHUMWAY,

From the Committee on Public Works and Transportation, for consideration of title XII of the House bill, and section 4502 of the Senate amendment, and modifications committed to conference:

NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
NICK RAHALL,
DOUGLAS APPLEGATE,
RON DE LUGO,
JOHN PAUL HAMMERSCHMIDT,
ARLAN STANGELAND,
NEWT GINGRICH,
WILLIAM F. CLINGER,

From the Committee on Small Business, for consideration of title XIII and section 186 of the House bill, and titles XXXVII and XXXIX and section 1804 (insofar as it would add new section 661(d)(2)(B) to the Foreign Assistance Act of 1961) of the Senate amendment, and modifications committed to conference:

JOHN J. LAFACE,
NEAL SMITH,

IKE SKELTON,
NICK MAVOROULES,
JAMES H. BILBRAY,
JOSEPH M. MCDADE,
ANDY IRELAND,
SILVIO O. CONTE,

From the Committee on Small Business, for consideration of section 314 of the House bill (insofar as it would add new section 203(c) to the Export Administration Amendments Act of 1985), and modifications committed to conference:

JOHN J. LAFALCE,
NEAL SMITH,
IKE SKELTON,
JOSEPH M. MCDADE,
ANDY IRELAND,

From the Committee on Science, Space, and Technology, for consideration of section 911 of the House bill, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
BUDDY MACKAY,
TIM VALENTINE,
GEORGE E. BROWN, JR.,
JIM SCHEUER,
MANUEL LUJAN, JR.,
SHERWOOD BOEHLERT,
DON RITTER,
RON PACKARD,

From the Committee on Science, Space, and Technology, for consideration of sections 3852 and 3853 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
BUDDY MACKAY,
GEORGE E. BROWN, JR.,
JIM SCHEUER,
MARILYN LLOYD,
MANUEL LUJAN, JR.,
SID MORRISON,
DON RITTER,
CONSTANCE MORELLA,

From the Committee on Science, Space, and Technology, for consideration of section 3871 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
BUDDY MACKAY,
GEORGE E. BROWN, JR.,
JIM SCHEUER,
MARILYN LLOYD,
MANUEL LUJAN, JR.,
SHERWOOD, BOEHLERT,

From the Committee on Science, Space, and Technology, for consideration of sections 3881 through 3884 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DAVE MCCURDY,
DAN GLICKMAN,
BILL NELSON,
TOM MCMILLEN,
JIMMY HAYES,
MANUEL LUJAN, JR.,
TOM LEWIS,
DON RITTER,

From the Committee on Science, Space, and Technology, for consideration of titles XL through XLIV, and sections 4503 through 4505 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
GEORGE E. BROWN, JR.,
JIM SCHEUER,
MARILYN LLOYD,
DAN GLICKMAN,
MANUEL LUJAN, JR.,
SHERWOOD BOEHLERT,
CLAUDINE SCHNEIDER,
DON RITTER,

From the Committee on Science, Space, and Technology, for consideration of section 4902 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
GEORGE E. BROWN, JR.,
JIM SCHEUER,
MARILYN LLOYD,
DAN GLICKMAN,
MANUEL LUJAN, JR.,
TOM LEWIS,
RON PACKARD,
JACK BUECHNER,

From the Committee on Science, Space, and Technology, for consideration of sections 461 through 471 and 904 of the House bill, and sections 2305, 3801 through 3809, and 3909 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
GEORGE E. BROWN, JR.
(Except for sections 461 through 471 of the House bill, and sections 3801 to 3809 of the Senate amendment),
MANUEL LUJAN, JR.,
SHERWOOD BOCHLERT
(Except for sections 461 to 471 of the House bill and sections 3801 to 3809 of the Senate amendment),

From the Committee on Science, Space, and Technology, for consideration of section 412 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
RALPH M. HALL,
ROBERT TORRICELLI,
MANUEL LUJAN, JR.,

From the Committee on Science, Space, and Technology, for consideration of sections 3861 through 3867 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
TIM VALENTINE,
MANUEL LUJAN, JR.,
DON RITTER,

From the Committee on Rules, for consideration of title XVI and sections 114 (d) and (e) of the House bill, and sections 104, 107, 110, and 2131 of the Senate amendment, and modifications committed to conference:

CLAUDE PEPPER,
JOE MOAKLEY,
BUTLER DERRICK,
TONY P. HALL,
ALAN WHEAT,
TRENT LOTT,
GENE TAYLOR,

From the Committee on Armed Services, for consideration of sections 1030 through 1034, and 4901 of the Senate amendment, and modifications committed to conference:

LES ASPIN,
SAMUEL S. STRATTON,
NICK MAVROULES,

From the Committee on Armed Services, for consideration of section 1021 of the Senate amendment, and modifications committed to conference:

LES ASPIN,
NICK MAVROULES,
DUNCAN HUNTER,

Managers on the Part of the House.

From the Committee on Finance:

LLOYD BENTSEN,
DANIEL P. MOYNIHAN,
MAX BAUCUS,
DAVID BOREN,
BOB PACKWOOD,
JOHN CHAFEE,
BILL ROTH,
JOHN DANFORTH,

From the Committee on Banking, Housing, and Urban Affairs:

PAUL SARBANES,
ALAN J. DIXON,
JOHN HEINZ,

From the Committee on Commerce, Science, and Transportation:

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
J.J. EXON,
DAN RIEGLE,
JOHN C. DANFORTH,
BOB PACKWOOD,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
BARBARA MIKULSKI,
BROCK ADAMS,

From the Committee on Small Business:

DALE BUMPERS,
JIM SASSER,
LOWELL P. WEICKER, JR.,

From the Committee on the Judiciary:

DENNIS DECONCINI,
PATRICK LEAHY,

From the Committee on Foreign Relations:

CLAIBORNE PELL,
PAUL SARBANES,
CHRISTOPHER J. DODD,

From the Committee on Agriculture, Nutrition, and Forestry:

PAT LEAHY,
JOHN MELCHER,
DAVID PRYOR,

From the Committee on Governmental Affairs:

JOHN GLENN,
LAWTON CHILES,
JEFF BINGAMAN,
TED STEVENS
(I object to the anti-Alaskan provisions and several non-trade provisions),

Solely for the consideration of sections 1029 through 1036 of title X:

ALAN CRANSTON,

Solely for the consideration of title XIV:

J.J. EXON,
JOHN C. DANFORTH,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the

Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—TRADE, CUSTOMS, AND TARIFF LAWS

Findings and Purposes (sec. 101 of House bill; sec. 101 of Senate amendment; sec. 1001 of conference agreement)

Present law

No provision.

House bill

The House bill sets forth findings, U.S. national policy, and requirements for certain Presidential and Congressional actions:

Findings. Makes general findings about the causes and negative implications of the fundamental disequilibrium in the U.S. trade and current accounts and net external debt, and the importance of pursuing policies to ensure future stability in U.S. external trade and to guarantee the continued vitality of the U.S. technological, industrial, and agricultural base.

National policy. Establishes as U.S. policy—

(1) to reduce substantially U.S. trade and current account deficits;

(2) to seek by 1992 more consistent equilibrium in such accounts; and

(3) to maintain reasonably stable exchange rates through measures to ensure that the dollar remains at a level which maintains the competitiveness of U.S. exports and prevents disruptive import surges.

Presidential action. Requires the President to use all appropriate powers to achieve the national trade policy, including fiscal, monetary, and trade policies and better management of Third World debt.

Congressional action. Requires the Congress, in developing legislation, to give the highest priority to achieving the national policy and to Presidential recommendations for achieving that policy.

Senate amendment

The Senate amendment sets forth the short title, findings, and purposes of titles I through IX of the bill:

Short title. Omnibus Trade Act of 1987.

Findings. Makes general findings about the United States as a debtor nation, the importance but volatility of the global economy, the weakness of the world trading system, the developing country debt burden, and the importance of negotiating trade agreements and related agreements on investment, finance, intellectual property, and services.

Purposes. Establishes as the Act's purposes—

(1) to authorize negotiation of reciprocal trade agreements;

(2) to strengthen U.S. trade laws;

(3) to improve management of U.S. trade strategy; and

(4) through these actions, improve the world's standard of living.

Conference agreement

The House recedes, with an amendment to include the findings from the House bill and to delete the short title.

SUBTITLE A—UNITED STATES TRADE AGREEMENTS

PART 1—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

Overall and Principal Trade Negotiating Objectives of the United States

a. Overall objectives (sec. 111(a) of House bill; sec. 105(a) of Senate amendment; sec. 1101(a) of conference agreement)

Present law

The overall U.S. trade negotiating objectives are to obtain:

a. More open and equitable market access; and

b. The harmonization, reduction, or elimination of practices that distort trade or commerce.

The harmonization, reduction, or elimination of agricultural barriers shall be undertaken to the maximum extent feasible in conjunction with the harmonization, reduction, or elimination of industrial barriers.

House bill

The overall U.S trade negotiating objectives are to obtain:

a. More open, equitable, and reciprocal market access;

b. The harmonization, reduction, or elimination of policies or measures which impede or distort international commerce; and

c. A more effective system of international trading disciplines and procedures.

Senate amendment

The overall U.S. trade negotiating objectives are to obtain:

a. More open, fair, and equitable market access;

b. The reduction or elimination of barriers and other trade-distorting practices;

c. An appropriate overall balance between benefits and concessions within the agricultural, manufacturing, mining, and services sectors; and

d. Improved management of the new global economy.

Conference agreement

The conference agreement combines the House and Senate provisions.

b. Principal objectives (sec. 111(b) of House bill; secs. 105, 601 of Senate amendment; sec. 1101(b) of conference agreement)

1. Dispute settlement

Present law

United States negotiating objectives on GATT revision include revisions necessary to establish procedures for regular consultations among countries on trade and procedures to adjudicate commercial disputes among such countries, and the revision of GATT decisionmaking procedures to more nearly reflect the balance of economic interests.

House bill

The principal U.S. negotiating objectives on dispute settlement are to provide for more effective and expeditious dispute settlement mechanisms and procedures, and to ensure that such mechanisms in the GATT and GATT agreements provide for more effective and expeditious dispute resolution and enable better enforcement of U.S. rights.

Senate amendment

The principal U.S. negotiating objective on dispute settlement is the revision of GATT decisionmaking procedures to ensure timely and decisive resolution of disputes, including, but not limited to:

—establishing a standing roster of nongovernmental GATT experts to participate in GATT dispute settlement panels; and

—establishing a ministerial-level mechanism for ongoing monitoring and consultations about the consistency of GATT members' trade policies with GATT principles.

Conference agreement

The Senate recedes.

2. Improvement of the GATT and multi-lateral trade negotiation agreements

Present law

United States negotiating objectives on GATT revision include extension of GATT Articles to conditions of trade not presently covered in order to move toward more fair trade practices.

House bill

The principal U.S. negotiating objectives on GATT and trade agreement improvement are to improve the operation and expand the coverage of GATT and multilateral trade agreements and to expand participation, where appropriate.

Senate amendment

The principal U.S. negotiating objectives on GATT and trade agreement improvement are extension of GATT Articles and Codes of conduct to products, sectors, and conditions of trade not adequately covered, including services, investment (e.g., performance requirements), intellectual property rights and expansion of entity coverage under the Government Procurement Code in order to move toward more open and fair trade practices.

Conference agreement

The conference agreement combines elements of the House and Senate provisions, and adds an objective to enhance the status of the GATT.

3. Transparency

Present law

No provision.

House bill

No provision.

Senate amendment

The principal U.S. negotiating objective on transparency is any practicable revision of the international trading system to enhance transparency, including:

—substituting or replacing quantitative restrictions with tariffs or auctioned quotas;

—use of tariffs for domestic adjustment; and

—transparency in the trade policy making procedures of the GATT Contracting Parties to clarify the costs and benefits of trade policy actions.

Conference agreement

The House recedes, with an amendment stating that the objective regarding transparency is to obtain broader application of the principle of transparency and clarification of the costs and benefits of trade policy actions through the observance of open and equitable procedures in trade matters by the GATT Contracting Parties.

4. Developing countries

Present law

No provision.

House bill

The principal U.S. negotiating objective on developing countries is to ensure that developing countries, commensurate with their attaining more advanced and competitive levels of economic development, assume

a full measure of responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices.

Senate amendment

The principal U.S. negotiating objective on developing countries is the revision of GATT Articles relating to "special and differential" treatment for developing countries to establish procedures for gradually reducing nonreciprocal trade benefits to more advanced developing nations.

Conference agreement

The conference agreement combines elements of the House and Senate provisions.

5. Current account surpluses

Present law

No provision.

House bill

The principal U.S. negotiating objective with respect to current account surpluses is to develop rules that impose greater responsibility on countries with large and persistent current account surpluses to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation of trade agreements where feasible and appropriate.

Senate amendment

The principal U.S. negotiating objectives with respect to current account surpluses are the revision of GATT Article XII (balance-of-payment rules) to address persistent and excessive current account imbalances of any GATT Contracting Party with the world, including imbalances which threaten the stability of the international trading system, and the accelerated implementation of concessions in any trade agreement by countries with persistent current account surpluses.

Conference agreement

The conference agreement combines the House and Senate provisions.

6. Trade and monetary coordination

Present law

No provision.

House bill

The principal U.S. negotiating objective on trade and monetary coordination is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

Senate amendment

The principal U.S. negotiating objective on trade and monetary coordination is to increase GATT coordination with the International Monetary Fund (IMF) and the World Bank to ensure participation of the GATT Secretariat in IMF stabilization programs and World Bank structural adjustment loans.

Conference agreement

The Senate recedes.

7. Agriculture

Present law

No provision.

House bill

The principal U.S. negotiating objective on agriculture is to achieve on an expedited basis to the maximum extent feasible, more open and fair conditions of trade in agricultural commodities by:

—developing, strengthening, and clarifying rules to discipline restrictive or trade-distorting import and export practices;

—eliminating and reducing substantially specific constraints to fair trade and more open market access, such as tariffs, quotas, subsidies, and other nontariff practices, including unjustified phytosanitary and sanitary restrictions; and

—seeking agreements by which major agricultural exporting nations agree to pursue policies to reduce "excessive" production of commodities during periods of oversupply, with due regard for the fact that the U.S. already undertakes such policies, and without recourse to arbitrary schemes to divide market shares among major exporting countries.

Senate amendment

The principal U.S. negotiating objectives on agriculture are the revision of GATT with regard to agricultural trade:

—To increase U.S. agricultural exports by eliminating transparent and non-transparent barriers;

—To clarify GATT rules for agricultural trade, which have been the source of considerable confusion, disagreement, and conflict among nations;

—To make the GATT a useful tool for a free and more open world agricultural trading system by resolving questions pertaining to export subsidies, market pricing, and market access;

—To seek to prevent the harmful external effects of the EC's agricultural policies;

—To seek the elimination of barriers to agricultural trade (including high value-added commodities) in Japan.

The Senate amendment makes Congressional findings on the inadequacy of GATT rules on agriculture and the need for rapid success in the Uruguay Round, and states it is U.S. policy (1) to reduce agriculture price support programs and barriers to trade in an agreed multilateral arrangement, by reducing the level of government protection of the agricultural sector in a manner that ensures a strong domestic agricultural economy, increased exports, and the vitality of the family farm and is consistent with the historical goal of stabilizing farm income and prices in cyclical and unpredictable agricultural markets, and with efforts to reduce the Federal budget deficit; or, if necessary, (2) to maintain agriculture supports at current or increased levels to promote exports and maintain a competitive position in world markets until an acceptable agreement is reached. States U.S. agricultural objectives in the GATT are (1) to increase U.S. exports by eliminating trade barriers and production subsidies; (2) to clarify GATT rules for agricultural trade; and (3) to make GATT a useful tool for a free, more open world agriculture trading system by resolving questions on export subsidies, market pricing, and market access.

Conference agreement

The Senate recedes, with an amendment to include general negotiating objectives from the Senate provision.

8. Unfair trade practices

Present law

United States negotiating objectives on GATT revision include any revisions necessary to define the forms of subsidy to industries producing products for export and to attract foreign investment which are consistent with an open, fair, and nondiscriminatory international trade system.

House bill

The principal U.S. negotiating objectives on unfair trade practices are to improve provisions of the GATT and nontariff measure agreements to deter and to provide greater discipline on unfair trade practices, including forms of subsidy, dumping, and export targeting practices not adequately covered; to improve further provisions applicable to agricultural trade so as to be consistent with those applicable to industrial products; and otherwise to seek greater discipline on, and to discourage persistent use of, unfair trade practices.

Senate amendment

The principal U.S. negotiating objectives on unfair trade practices are:

Revision of GATT Articles necessary to define and discipline adverse trade effects resulting from the use of resource input subsidies, targeting, diversionary dumping, and dumped or subsidized inputs;

Application of similar rules to the treatment of primary and nonprimary products in the GATT Agreement on Subsidies and Countervailing Measures; and

Enforcement of GATT rules against noncommercial state trading practices and unfair trade concessions requirements.

Conference agreement

The House recedes, with an amendment to add revisions to deter and to discourage persistent use of unfair trade practices.

9. Trade in services

Present law

United States negotiating objectives on trade in services are to reduce or eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and to develop internationally agreed rules, including dispute settlement procedures, which are consistent with U.S. policies and will reduce or eliminate such barriers or distortions and help ensure open international trade in services. United States negotiators must take into account legitimate U.S. domestic objectives (e.g., health or safety, etc.).

House bill

The principal U.S. negotiating objective on trade in services is the same as present law, except it refers to helping to ensure "fair, equitable opportunities in foreign markets" rather than "open international trade in services;" it does not include domestic objectives requirement.

Senate amendment

The Senate amendment cross references to present law.

Conference agreement

The Senate recedes, with an amendment to include the requirement under present law to take into account legitimate U.S. domestic objectives.

10. Intellectual property

Present law

No provision.

House bill

The principal U.S. negotiating objectives on intellectual property are to seek enactment and effective enforcement by foreign countries of laws which recognize and adequately protect intellectual property; and to develop and strengthen international rules, dispute settlement provisions, and enforcement procedures against trade-distorting practices arising from inadequate national

protection and ineffective enforcement of intellectual property rights, including:

—incorporation in the GATT of adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights as the basis for the dispute settlement provisions and enforcement procedures, which norms and standards are complementary to those of existing international conventions; and

—supplementing and strengthening standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection."

Intellectual property" includes copyrights, patents, trademarks, mask works, and trade secrets.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with a substitute amendment.

11. Foreign direct investment

Present law

United States negotiating objectives on foreign direct investment are to reduce or eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and to develop internationally agreed rules, including dispute settlement procedures, which will help ensure a free flow of foreign direct investment and will help reduce or eliminate the trade distortive effects of certain investment related measures. The same domestic objectives apply as for services.

House bill

The principal U.S. negotiating objective on foreign direct investment is the same as present law, except it does not include the domestic objectives requirement.

Senate amendment

The Senate amendment cross references to present law.

Conference agreement

The Senate recedes, with an amendment to include the requirement under present law to take into account legitimate U.S. domestic objectives.

12. Safeguards

Present law

United States negotiating objectives on safeguards are to obtain internationally agreed rules and procedures which permit the use of temporary measures to ease adjustment to changes occurring in competitive conditions in the domestic markets of the parties to an agreement due to the expansion of international trade, and to extend GATT safeguard procedures to all forms of import restraints used in response to injurious competition.

House bill

The principal U.S. negotiating objectives on safeguards are to improve and expand rules and procedures covering safeguard measures; to ensure that such measures are transparent, temporary, degressive, and subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment.

Senate amendment

The principal U.S. negotiating objectives on safeguards are to establish procedures to monitor the use by GATT Contracting Parties of import relief action for their domestic industries; and to ensure that such action does not discriminate between different suppliers, is limited in duration, and is dependent on adjustment efforts by the domestic industries.

Conference agreement

The Senate recedes, with an amendment to include the objective to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

13. Specific barriers

Present law

The U.S. negotiating objective on specific trade barriers is to obtain competitive opportunities for U.S. exports equivalent to the competitive opportunities afforded in U.S. markets with respect to appropriate product sectors of manufacturing and with respect to the agricultural sector.

House bill

The principal U.S. negotiating objectives on specific barriers are:

—To achieve maximum reduction, elimination, or harmonization of specific tariff and nontariff trade barriers, particularly measures identified in the annual foreign trade barriers (National Trade Estimates) report and tariff disparities that impede access to particular export markets; and

—To obtain international agreement regarding the principle that nondiscriminatory (most-favored-nation) treatment and other multilateral trade benefits are not required to be extended by a country to any other country unless such other country permits reciprocal market access opportunities for that country's goods and services.

Senate amendment

The principal U.S. negotiating objectives on specific barriers are to obtain, with respect to manufacturing, mining, agriculture, services, and investment related to trade in such economic sectors, competitive opportunities for U.S. exports in foreign markets equivalent to the competitive opportunities afforded foreign exports to U.S. markets, including the reduction or elimination of foreign tariffs and nontariff barriers on competitive U.S. exports when like or similar products enter the United States at low rates of duty or are duty-free.

Conference agreement

The conference agreement combines elements of the House and Senate provisions.

14. Worker rights

Present law

United States negotiating objectives on GATT revision include the adoption of international fair labor standards and public petition and confrontation procedures in the GATT.

House bill

The principal U.S. negotiating objectives on worker rights are:

—To promote respect for worker rights;

—To secure a review of the relationship of worker rights to GATT Articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

—To adopt as a principle of the GATT that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

Senate amendment

The principal U.S. negotiating objectives on worker rights are the revision of international agreements regarding worker rights, including:

—the promotion of, and respect for, worker rights;

—a review of the relationship of worker rights to GATT Articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers;

—adoption as a principle of the GATT that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

Conference agreement

The Senate recedes.

15. Access to high technology

Present law

The U.S. negotiating objectives on access to high technology are:

—To obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

—To obtain the elimination or reduction of, or compensation for, significantly distorting effects of acts, policies, or practices of foreign governments identified in the annual foreign trade barriers report, with particular consideration to the nature and extent of foreign government intervention affecting U.S. exports of high technology products or investments in high technology industries;

—To obtain commitments that official foreign policies will not discourage government or private procurement of foreign high technology products and related services;

—To obtain the reduction or elimination of all tariffs and other barriers to U.S. high technology exports;

—To obtain commitments to foster national treatment;

—To obtain commitments to foster joint scientific cooperation; and

—To provide minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

House bill

The principal U.S. negotiating objective on access to high technology is to obtain the elimination or reduction of foreign barriers to, and foreign government acts, practices, or policies which limit equitable access by U.S. persons to foreign-developed technology, including barriers, acts, policies, or practices that have the effect of:

—restricting U.S. persons' participation in government-supported research and development projects;

—denying equitable access by U.S. persons to government-held patents;

—requiring approval or agreement of government entities, or imposing other forms of government intervention, as a condition for granting licenses to U.S. persons by foreign persons (except for national security purposes); and

—otherwise denying U.S. persons equitable access to foreign-developed technology or contributing to an inequitable flow of technology between the United States and its trading partners.

In pursuing this objective, the United States shall take into account U.S. Government policies in licensing or otherwise making available to foreign persons technol-

ogy and other information developed by U.S. laboratories.

Senate amendment

The principal U.S. negotiating objective on access to high technology is similar to the House bill, except it does not include the elimination or reduction of foreign government acts, policies, or practices which limit equitable access.

Conference agreement

The Senate recedes.

16. Border taxes

Present law

United States negotiating objectives on GATT revision include the revision of GATT Articles with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct rather than indirect taxes for revenue needs.

House bill

No provision.

Senate amendment

Identical provision in substance as present law.

Conference agreement

The House recedes.

c. Specific agricultural objectives

1. Specific barriers (sec. 111 of House bill)

Present law

No provision.

House bill

The House bill expresses the sense of the Congress that the USTR should immediately enter into negotiations and use all his power and authority to achieve elimination of numerous tariff and nontariff barriers and unfair trade practices (including those listed in the annual foreign trade barriers report) that affect U.S. agricultural products, with particular attention to certain (listed) practices of the EC, Japan, Korea, Taiwan, India, Canada, and Argentina, to eliminate such practices affecting U.S. exports of forest products, and to ensure that any agreement negotiated to reduce or eliminate unfair trade in forest products (including the U.S.-Canada lumber agreement) is fully implemented within the framework contemplated.

Senate amendment

No provision.

Conference agreement

The House recedes.

2. Liquor-filled chocolates (sec. 979 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment expresses the sense of the Congress that the President should negotiate foreign duty reductions on U.S. liquor-filled chocolates to U.S. tariff levels (the European Communities' duty is 12 percent compared to the U.S. duty of 7 percent).

Conference agreement

The Senate recedes.

3. European Communities (EC) soybeans and corn gluten feed (sec. 111 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment expresses the sense of the Senate that the Administration should not enter into any agreement with the EC that would enable the EC to withdraw or modify its obligation to provide duty-free treatment on soybeans, soybean meal, or corn gluten feed.

Conference agreement

The Senate recedes.

4. Wheat gluten (secs. 604, 605 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment sets forth findings and a declaration of Congress that GATT negotiations should achieve a significant reduction in foreign tariffs on wheat gluten, the Secretary of Agriculture should favorably consider industry proposals for use of export enhancement and targeted export assistance programs and promote the use of wheat gluten to enhance wheat flour food aid, and that the President should take all steps to defend the domestic wheat gluten industry (including use of section 301) if GATT negotiations are unsuccessful. The Secretary of Agriculture must submit a report to the House and Senate Committees on Agriculture within 120 days detailing the impact of the current international tariff structure on the U.S. wheat gluten industry.

Conference agreement

The Senate recedes.

The conferees are aware of the fact that on February 8, 1988, the Commission of the European Communities (EC) announced the elimination of export refunds on wheat gluten. If the EC should ever reinstitute the export refund, or provide any other export subsidy for wheat gluten, the conferees expect the United States Government to oppose such actions vigorously.

d. Effects on small business (sec. 976 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Secretary of Commerce is directed to study the effects on U.S. small business of extending the GATT to intellectual property rights, services, agriculture, aquaculture, and agri-business products, and to report the findings to Congress within 6 months.

Conference agreement

The Senate recedes.

Trade Agreement Negotiating Authority

a. Tariff proclamation authority; limits on tariff authority (sec. 112 of House bill; sec. 103 of Senate amendment; sec. 1102(a) of conference agreement)

Present law

Since 1934, Congress has periodically delegated authority to the President to enter into tariff agreements and to proclaim changes in U.S. rates of duty to carry out such agreements, subject to certain limits. Such authority under the Trade Act of 1974 expired in 1980.

Currently, if the President enters into an executive agreement to reduce U.S. rates of duty, he can only implement the change in the U.S. rate through a separate enactment from Congress. Currently, no law or rule of Congress provides any special procedures for Congressional consideration of tariff agreements except for bilateral trade agreements.

Tariff agreement authority in effect from 1975 to 1980 under the Trade Act of 1974 was subject to the following limitations:

No reduction in U.S. duties by more than 60 percent (to 40 percent of the rates in effect on January 1, 1975), except that rates 5 percent ad valorem or below were not subject to the limitation.

No increase in U.S. duties above the higher of 50 percent above the "column 2" (non MFN) rate of duty or 20 percent ad valorem above the rate as of January 1, 1975.

Duties could not be reduced more than 3 percent ad valorem or one-tenth of the total reduction per year, unless the total reduction did not exceed 10 percent; reductions could not be phased in over more than a 10-year period.

Annual reductions could exceed the limits by the lesser of the difference between the limit and the next lower whole number or one-half of one percent ad valorem, in order to simplify the computation.

House bill

The House bill reestablishes separate Presidential authority to enter into multilateral tariff agreements until *January 3, 1993*, and to *proclaim* changes in U.S. rates of duty required or appropriate to carry out such agreements, subject to certain limits.

Tariff agreement authority is subject to the following limitations:

Reductions of existing U.S. duties cannot exceed 60 percent of existing rates if either the U.S. International Trade Commission (ITC) or the USTR finds a greater reduction on a particular article would have a probable significant adverse economic effect on the domestic industry producing that article. Rates of duty on all other articles may be reduced to zero. There is no limit on duty increases.

Reductions on significantly import-sensitive articles may not be phased in faster than over a 10-year period; reductions on other import-sensitive articles must be phased in over a period up to 10 years.

Rounding authority is provided identical to the Trade Act of 1974.

Senate amendment

The Senate amendment provides no separate authority for the President to enter into or to proclaim changes in U.S. rates of duty to implement multilateral tariff agreements. The trade agreement authority, subject to Congressional approval of implementing legislation under the "fast track" procedure, applies to any agreements on tariffs, as well as on nontariff barriers.

Trade agreement authority limits tariff reductions on all articles to a maximum of 50 percent of existing duty rates, except that rates already 5 percent ad valorem or below may be reduced to zero.

The President shall take into account ITC advice identifying sensitive or potentially import-sensitive products, including whether any tariff modification may injure the domestic industry producing like or similar articles.

Conference agreement

The Senate recedes on the provision of tariff proclamation authority.

The House recedes on tariff authority limits that may be *proclaimed* (i.e., maximum 50 percent reduction, unless the existing duty is 5 percent ad valorem or below),

with amendments (1) providing staging authority whereby duty reductions on any article cannot exceed 3 percent ad valorem per year, or one-tenth of the total reduction, whichever is greater, except staging is not required if the ITC determines there is no U.S. production of the article; and (2) providing rounding authority identical to the Trade Act of 1974. Any duty reductions that exceed 50 percent of the existing duty or any tariff increases are subject to Congressional approval under the "fast track" implementing procedure.

b. Agreements regarding nontariff barriers; extension of "fast track" implementation procedure (secs. 113, 114 of House bill; secs. 103, 104 of Senate amendment; secs. 1102(b), 1103 of conference agreement)

Present law

The President was authorized to enter into trade agreements under two trade agreement authorities under the Trade Act of 1974 in effect until January 3, 1988, for implementation under the "fast track" Congressional approval procedure:

a. *Barriers to and other distortions of trade (section 102).* Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the U.S. economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, then he may enter into trade agreements providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers.

b. *GATT revision (section 121).* The President shall to the extent feasible enter into agreements with foreign countries to establish GATT reform principles listed in the objectives of the law.

House bill

The House bill authorizes the President to enter into trade agreements with foreign countries providing for the harmonization, reduction, or elimination of nontariff barriers or other distortions, for implementation under the "fast track" approval procedure if the agreement is entered into on or before *January 3, 1991.*

The nontariff "fast track" approval procedure is extended for agreements entered into through *January 3, 1993,* if, by July 15, 1990, (1) USTR consults with, and submits a report to, the House Ways and Means and Senate Finance Committees requesting a 2-year extension, describing the progress that has been made to achieve U.S. objectives that justifies continuation of the negotiations, and stating the reasons an extension is needed to complete the Uruguay Round or other trade negotiations; and (2) neither the House Ways and Means nor the Senate Finance Committee disapproves the extension before January 4, 1991.

Senate amendment

The Senate amendment authorizes the President to enter into multilateral trade agreements with foreign countries providing for a reduction or elimination of any barriers to or distortions of trade (tariff and nontariff) through *January 3, 1994.*

The Senate amendment authorizes trade agreement implementation under the "fast track" approval procedure beginning as soon after January 3, 1988, as the Administration submits a Statement of U.S. Trade Policy, through *January 3, 1992.* The Statement must include, but is not limited to, a description of U.S. policies with respect to domestic industries affected by imports and domestic industries that have a substantial potential for exporting.

The "fast track" approval procedure is continued through *January 3, 1994,* if neither the House nor the Senate passes a resolution of disapproval under the "fast track" procedure (automatic committee discharge does not apply) between January 4–July 1, 1991, introduced by any Member and reported by either the Senate Finance or House Ways and Means Committees before May 15, 1991, because sufficient tangible progress has not been made in trade negotiations. (Separate provisions on consultation and mid-term reporting apply.)

Conference agreement

The House recedes on nontariff agreement authority with an amendment changing the date to *May 31, 1993,* and removing the limitation to multilateral agreements.

The Senate recedes on the statement of trade policy as a condition for original extension of "fast-track" implementation.

The Senate recedes on the original extension of "fast-track" implementation with an amendment changing the date to *May 31, 1991.*

The House recedes on the further extension of "fast-track" implementation with amendments (1) changing the extension date to *May 31, 1993;* (2) providing joint referral of a disapproval resolution introduced in the House to the Committees on Ways and Means and Rules; (3) changing the procedure to passage of a nonamendable disapproval resolution by either the House or the Senate before May 31, 1991, and within 15 legislative days after it is reported by either the Senate Finance or the House Ways and Means and Rules Committees; and (4) melding the bases in the House bill and the Senate amendment for extension (request and progress in negotiations).

c. Bilateral agreements regarding tariff and nontariff barriers

1. Extension of authority (secs. 113, 114 of House bill; secs. 103, 104, 947 of Senate amendment; secs. 1102(c), 1103 of conference agreement)

Present law

Bilateral tariff and nontariff trade agreements could be entered into and implemented under the "fast track" Congressional approval procedure until January 3, 1988, subject to prenegotiation requirements:

—Another country requested the negotiation of a bilateral agreement;

—The President notified the Senate Finance and House Ways and Means Committees of the negotiations and consults with those Committees regarding the negotiation of the agreement; and

—Neither the Senate Finance nor the House Ways and Means Committees disapproved within 60 legislative days prior to the 90-day advance notice required of entry into an agreement.

No trade benefit could be extended to any country by reason of the extension of any trade benefit to another country under a bilateral agreement providing for reduction or elimination of any U.S. duty.

House bill

The House bill extends the authority of the President to negotiate and enter into bilateral tariff and nontariff agreements under the "fast track" implementation procedure and subject to the prenegotiation requirements to *January 3, 1993,* except for negotiations underway as of January 1, 1987 (Canada).

Nontariff, as well as tariff, benefits are included in the ban on extension to third countries.

No provision or amendment made by this Act shall be applied to any country with which the United States has a bilateral free trade area agreement that entered into force before January 1, 1987 (Israel) if there is an inconsistency between such provisions or amendment and the agreement.

Senate amendment

The Senate amendment extends the authority of the President to negotiate and enter into bilateral trade agreements (tariff and nontariff) subject to the pre-negotiation requirements to *January 3, 1994.* The authority would apply to Canada only if the pre-negotiation conditions are met again after enactment.

The Senate amendment authorizes agreement approval under the "fast track" implementation procedure beginning as soon after January 3, 1988, as the Administration submits the Statement of U.S. Trade Policy and subject to the same possible extension disapproval process in 1991 and "reverse fast track" procedure as apply to the multilateral trade agreement authority.

Nontariff, as well as tariff, benefits are included in the ban on extension to third countries.

No provision or amendment made by this Act shall be applied to any country with which the United States has a bilateral free trade area agreement that entered into force before January 1, 1987 (Israel) if there is an inconsistency between such provisions or amendment and the agreement.

Conference agreement

The Senate recedes on the extension of authority, with amendments to apply the same original (*May 31, 1991*) and further extension (*May 31, 1993*) dates for "fast track" implementation as apply to the multilateral trade agreement authority, and subject to the same extension disapproval procedure.

The Senate recedes on the statement of trade policy as a condition for original extension of the "fast track" implementation procedure.

The House recedes on the "reverse fast track," as amended for the multilateral trade agreement authority.

The House recedes on the application to Canada.

2. Review of bilateral trade relationships (sec. 113(b) of House bill)

Present law

No provision.

House bill

The USTR must review, within a year after enactment, U.S. bilateral trade relationships and identify foreign countries that have the best potential for bilateral free trade areas. The USTR must consult with the House Ways and Means and Senate Finance Committees on the review results.

Senate amendment

No provision.

Conference agreement

The House recedes.

d. Mid-term reports (sec. 114(d) of House bill; sec. 103(d) of Senate amendment; sec. 1103(b) of conference agreement)

Present law

No provision.

House bill

As a pre-condition to extension of "fast track" nontariff barrier trade agreement au-

thority beyond January 3, 1991, the USTR must submit a report by *July 15, 1990*, to the House Ways and Means and Senate Finance Committees requesting a 2-year extension, describing the progress made to achieve U.S. negotiating objectives that justifies continuation of negotiations, and stating the reasons extended authority is needed to complete the Uruguay Round or other trade negotiations.

Senate amendment

The Senate amendment requires the President and the Advisory Committee on Trade Negotiations each to submit by *January 3, 1991*, a progress report on multilateral and bilateral negotiations, including (1) a description of all agreements negotiated and the anticipated schedule for submission to Congress; (2) a statement certifying whether sufficient progress has been achieved to warrant continuation of nontariff negotiations; (3) a statement certifying whether progress has been made in tariff negotiations; (4) a description of any progress in achieving the negotiating objectives; and (5) a description of objectives that are not likely to be addressed in agreements and the reasons, any new objectives that should be adopted, and any intended alternative options.

Conference agreement

The Senate recedes with amendments (1) making the reports a precondition to further extension of "fast-track" implementation; (2) changing the latest submission date to *90 calendar days prior* to the expiration on *May 31, 1991*, of the original extension of "fast-track" implementation; and (3) adding the report content from the Senate amendment describing agreements negotiated and the schedule for submission to the Congress.

e. "(Reverse fast track" sec. 104 of Senate amendment; sec. 1103 of conference agreement)

House bill

No provision.

Senate amendment

The "fast track" approval procedure for both tariff and nontariff agreements is terminated if both the Senate Finance and House Ways and Means Committees report, and both the House and Senate separately pass under the "fast track" procedure (automatic committee discharge does not apply), resolutions of disapproval within any 60 legislative day period because the President failed or refused to consult with Congress on trade policy.

Conference agreement

The House recedes, with amendments (1) limiting the basis for disapproval to failure or refusal of the USTR to consult with the Congress on trade negotiations and trade agreements as set forth in the consultation requirements; and (2) providing procedures as follows:

In the House: A resolution of disapproval must be introduced by the Chairman or Ranking Minority Member of the House Ways and Means *or* Rules Committee and reported by the Ways and Means *and* Rules Committees; the resolution would be nonamendable in Committee.

In the Senate: A resolution of disapproval must be an original resolution of the Senate Finance Committee.

In the House and Senate: No Committee automatic discharge applies; the "fast track" procedure applies to floor consideration (resolution nonamendable on the floor). The "fast track" approval procedure for nontariff barrier and bilateral trade agreements is terminated if both the House and Senate separately pass such resolutions within any 60 legislative day period.

f. Multilateral/ bilateral agreements (sec. 111(d) of House bill)

Present law

No provision.

House bill

The House bill states it is U.S. policy to use the Uruguay Round to enter into multilateral agreements that achieve, on a reciprocal and mutually advantageous basis, the purposes and objectives of Title I of H.R. 3, particularly (1) increasing U.S. export market opportunities, (2) achieving fairer terms and conditions of competition, (3) strengthening international dispute settlement, (4) ensuring fuller responsibility by all countries for a fair international trading system, and (5) improving the structure and role of the GATT.

These objectives are to be achieved, to the maximum extent feasible and appropriate, through multilateral trade agreements (negotiated with both developed and developing countries); except that the President is not precluded from (1) negotiating bilateral and other types of agreements if they would be more effective or appropriate, or multilateral agreements are not feasible; or (2) seeking agreements outside or supplemental to the Uruguay Round or the GATT if results are unduly delayed or U.S. objectives can be obtained more effectively.

Senate amendment

No provision.

Conference agreement

The House recedes.

g. Restrictions on entering into trade agreements

1. State trading enterprises (sec. 103(c) of Senate amendment; sec. 1103(a) of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

Before entering into a multilateral or bilateral trade agreement, the President must determine whether state trading enterprises (1) account for a significant share of the exports of a foreign country or of its goods that are subject to import competition and (2) whether those enterprises unduly burden and restrict, or adversely affect, the foreign trade of the United States or the U.S. economy or are likely to result in such a burden, restriction, or effect. If both determinations are affirmative, then the President may enter into a trade agreement with such country only if the agreement provides that those enterprises' purchases (which are not for the use of the foreign government) and their sales in international trade will be made in accordance with commercial considerations and those enterprises will afford U.S. firms adequate opportunity to compete for participation in such purchases and sales.

Conference agreement

The House recedes, with a substitute amendment requiring that the President's statement accompanying submission of trade agreements to Congress under the "fast-track" procedure include a description of the extent foreign parties to the agreement maintain noncommercial state trading enterprises that may adversely affect or nullify or impair U.S. benefits under the trade agreement involved, and whether and to what extent the trade agreement deals with or affects purchases or sales of such enterprises.

2. Other requirements (secs. 112, 113 of House bill; sec. 103(c) of Senate amendment; sec. 1102(b), (c) of conference agreement)

Present law

The President is authorized to negotiate trade agreements with foreign countries that provide on the basis of mutuality for harmonization, reduction, or elimination of trade barriers.

House bill

The President may enter into multilateral or bilateral agreements that will promote the purposes, policies, and objectives of Title I of the Act.

Senate amendment

A multilateral or bilateral trade agreement may be entered into only if it meets the following requirements:

—It meets applicable negotiating objectives in section 105 of the Senate amendment;

—It provides for the reciprocal exchange of obligations that are likely to be no less advantageous to the United States than to the other signatories;

—It provides a reasonable likelihood that the United States can enforce the obligations of the agreement notwithstanding differences between the culture, legal system, and commercial practices of the United States and these aspects of any other foreign signatory country; and

—Insofar as is practicable, it complements and reinforces existing agreements with foreign nonsignatory countries and existing U.S. agreements on related economic subjects.

Conference agreement

The Senate recedes, with an amendment to include the requirement that the agreement makes progress in meeting applicable negotiating objectives.

3. Consultations with Congressional committees (sec. 113 of House bill; sec. 103 of Senate amendment; sec. 1102(d) of conference agreement)

Present law

Before entering into any trade agreement, the President must consult with committees of jurisdiction on subject matters that would be affected and all matters relating to implementation.

House bill

The House bill adds a requirement that the consultations also include the nature of the agreement and how and to what extent it achieves U.S. purposes, policies, and negotiating objectives.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

h. Implementation of trade agreements

1. Submission to Congress (sec. 114(b) of House bill; sec. 1103(a) of conference agreement)

Present law

The President must give at least 90 calendar days advance notice to the Congress of his intention to enter into an agreement. After entering into the agreement, the President must submit a copy to the Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and state-

ment change or affect existing law, and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate.

House bill

The House bill adds a requirement that the President state that the agreement achieves applicable purposes, policies, and negotiating objectives, the reasons as to how and to what extent the agreement achieves them, and why and to what extent the agreement does not achieve other purposes, policies, and objectives.

The House bill also adds a requirement that the President include, in his statement accompanying trade agreements, a description of his efforts to obtain international exchange rate equilibrium and any effect the agreement may have on increased international monetary stability.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with amendments to clarify that the purposes, policies, and objectives refer to those applicable to the particular agreement and that the agreement "makes progress" in achieving them.

2. Conditional MFN (sec. 114(c) of House bill; sec. 104(a) of Senate amendment; sec. 1103(a) of conference agreement)

Present law

In order to ensure that a foreign country which benefits from a section 102 trade agreement is also subject to the obligations, the President may recommend to the Congress in the implementing bill and statement of administrative action that the benefits and obligations apply solely to the parties to the agreement, if such application is consistent with the terms of the agreement.

House bill

The House bill requires the President to recommend that trade agreement benefits and obligations apply solely to parties to the agreement, if such treatment is appropriate and consistent with the terms of the agreement and U.S. international obligations.

Senate amendment

The Senate amendment requires the President to recommend that trade agreement benefits and obligations apply solely to parties to the agreement, if such treatment is consistent with the agreement.

Conference agreement

The House recedes.

3. Reciprocal nondiscriminatory treatment (sec. 106 of Senate amendment; sec. 1105(b) of conference agreement)

Present law

The President was required to determine within 5 years after enactment of the Trade Act of 1974 whether any major industrial country had failed to make concessions under trade agreements entered into under the authority of the 1974 Act that provided competitive opportunities for the commerce of the United States in each of those countries substantially equivalent to the competitive opportunities provided by trade agreement concessions made by the United States. If the President made such a determination, he was required to recommend to Congress, generally or by article, to restore equivalence of opportunities, any legislation implementing the agreement not apply to such country and legislation terminating or denying benefits under such agreements for the country concerned.

Major industrial countries included Canada, the European Communities (EC) and its member countries, Japan, and any other country designated by the President.

House bill

No provision.

Senate amendment

The Senate amendment reestablishes the 1974 Act provision, requiring such a determination by the President before January 3, 1991, with respect to any major industrial country for trade agreements entered into under this Act.

Conference agreement

The House recedes, with an amendment to change the determination date to May 31, 1993.

i. Compensation authority (sec. 116 of House bill; sec. 309 of Senate amendment; sec. 1104 of conference agreement)

Present law

The President may enter into trade agreements and proclaim new concessions as compensation only for import relief actions, in order to maintain the general level of reciprocal and mutually advantageous concessions. No duty reductions may exceed 30 percent of existing levels. The President must consider whether the country concerned has violated commitments of benefit to the United States and the violation has not been adequately offset.

House bill

The House bill adds authority to enter into and proclaim compensation agreements for increases in or imposition of duties or other import restrictions under section 301, by legislation, or by tariff reclassification, if necessary or appropriate to meet U.S. international obligations. Compensation on any article is subject to the same duty reduction limitations as under general tariff agreement authority.

Senate amendment

The Senate amendment adds authority to enter into a compensation agreement for a section 301 action, subject to the duty reduction limits under present law, if the President determines it is necessary to meet U.S. international obligations.

Conference agreement

The Senate recedes, with amendments (1) to delete the compensation authority for legislation and (2) to apply the duty reduction limits under present law after the general tariff agreement authority expires on May 31, 1993.

j. Termination and reservation authority (sec. 115 of House bill; sec. 106 of Senate amendment; sec. 1105(a) of conference agreement)

Present law

The Trade Act of 1974 contains various provisions pertaining to tariff and nontariff trade agreement authorities:

—Section 125 authorizes the termination or withdrawal of trade agreement benefits or obligations under certain conditions.

—Section 126(a) requires nondiscriminatory (MFN) application of import restrictions or duty-free treatment under trade agreements, except as otherwise provided by law.

—Section 127 prohibits the reduction or elimination of import restrictions on any article that would threaten to impair the national security, and requires the reservation of articles from negotiations while they are subject to import relief or national security actions.

House bill

The House bill applies sections 125, 126(a), and 127 to any trade agreement entered into or any proclamation or Executive order issued under the trade agreement authorities of this Act.

Senate amendment

The Senate amendment contains similar cross-reference provisions to the House bill.

Conference agreement

Identical provisions in substance.

k. Accession of state trading regimes to the GATT (sec. 107 of Senate amendment; sec. 1106 of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

Before any foreign country accedes to any multilateral trade agreement to which the United States is a party, the President shall determine (1) whether state trading enterprises account for a significant share of that country's exports or of the goods of that country that compete with imports, and (2) whether such enterprises unduly burden and restrict or adversely affect U.S. foreign trade or the U.S. economy or are likely to result in such a burden, restriction, or effect.

If both determinations are affirmative, the President must reserve the U.S. right to withhold extension of any multilateral trade agreement to which that country accedes. The trade agreement shall not apply between the United States and that country until—

a. the country enters into an agreement with the United States providing that the state trading enterprises will (1) make purchases which are not for the use of the country and make sales in international trade in accordance with commercial considerations, and (2) afford U.S. firms adequate opportunity in accordance with customary practice to compete for participation in such purchases or sales; or

b. enactment of a bill approving extension of the agreement to the country. The "fast track" procedures shall apply to Congressional consideration of such a bill.

Conference agreement

The House recedes, with amendments to apply the provision only to GATT accession by "major" foreign countries.

l. Definitions (secs. 113, 114 of House bill; sec. 102 of Senate amendment; sec. 1107 of conference agreement)

Present law

The Trade Act of 1974 defines the terms "barrier," "distortion," and "international" trade for purposes of the trade agreement negotiating authority.

House bill

The House bill contains similar definitions for purposes of trade agreement authorities, adds "any denial of adequate and effective protection of intellectual property rights" to the definition of "distortion," and defines "foreign country" to include any foreign instrumentality.

Senate amendment

The Senate amendment contains similar definitions for purposes of trade agreement authorities, treats each foreign instrumentality and each territory or possession of a foreign country administered separately for

customs purposes as a separate foreign country, and includes the term "state trading enterprise."

Conference agreement

The conference agreement combines the House and the Senate provisions, except for the addition of international property rights to the definition of "distortion," and the inclusion of the definition of "barrier."

m. Reciprocal duty reductions with Canada (sec. 117 of House bill)

Present law

No provision.

House bill

The House bill authorizes the President to enter into tariff agreements with Canada for 5 years until January 3, 1991, providing for the MFN reduction or elimination of duties on a specific list of certain tariff items and to proclaim such modifications, to the extent that tariff concessions of approximately equivalent value are granted by Canada in exchange.

Senate amendment

No provision.

Conference agreement

The House recedes.

n. North American Trade Expansion Area (secs. 109, 110 of Senate amendment)

Present law

No provision. The general multilateral and bilateral reciprocal trade agreement authorities applied to any country, subject to Congressional "fast track" implementation. Bilateral agreements could be negotiated only upon foreign country request and if neither the House Ways and Means or Senate Finance Committees disapproved the negotiations.

House bill

No provision.

Senate amendment

The Senate amendment requires the President to initiate negotiations to obtain trade agreements with Mexico, Caribbean Basin countries, and Canada to provide for the reduction and eventual elimination of tariffs and nontariff barriers. Agreements may be bilateral or multilateral with all or any group of such countries and must be reciprocal and provide for mutual reduction of barriers. Agreements must be approved by Congress under the "fast track" implementing procedures.

Conference agreement

The Senate recedes.

PART 2—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

a. Application of Trade Act provisions (sec. 115 of House bill; sec. 106 of Senate amendment; sec. 1111 of conference agreement)

Present law

Sections 131-134 of the Trade Act of 1974 set forth procedural requirements that must be met prior to entering into trade agreements.

House bill

The House bill applies sections 131, 132, 133, and 134 prenegotiation procedures to all trade agreements proposed under this Act.

Senate amendment

The Senate amendment contains similar cross-reference provisions to the House bill.

Conference agreement

Identical provisions in substance.

b. Advice of the U.S. International Trade Commission

Present law

Section 131 of the Trade Act of 1974 requires the U.S. International Trade Commission (ITC) to advise the President as to the probable economic effects of possible modifications of any tariff under a proposed trade agreement on domestic industries producing like or directly competitive articles and on consumers; the ITC must also make investigations and reports requested by the President regarding possible agreements on nontariff barriers.

House bill

The House bill expands the scope of ITC advice to include the probable economic effects of any trade barrier modification on any domestic interest that might be affected, including services, intellectual property, and investment. The House bill also expands the scope of ITC investigations and reports that the President may request to assist him in developing trade policies and priorities, including priorities for actions to improve opportunities in foreign markets, and to determine the impact of possible modifications in U.S. trade barriers on the competitiveness of domestic industries or sectors.

Senate amendment

The Senate amendment requires the ITC in its advice or reports to identify any article that is sensitive or potentially sensitive to imports and to include a statement of whether any duty reduction, elimination, or modification under consideration may injure the domestic industry.

Conference agreement

The Senate recedes.

c. Executive branch agency advice

Present law

Section 132 of the Trade Act of 1974 requires information and advice from Executive branch agencies prior to entry into trade agreements.

House bill

The House bill requires the President to seek the agency advice through the existing interagency structure chaired by the USTR prior to entering into a trade agreement.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

d. Public hearings

Present law

Section 133 of the Trade Act of 1974 requires the President to hold public hearings on any proposed trade agreement.

House bill

The House bill expands the scope of public hearings to any matter relevant to a proposed trade agreement and to trade policy development and priorities, when appropriate.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

e. Prenegotiation summaries

Present law

Section 134 of the Trade Act of 1974 requires that the President receive a summary of the hearings and the ITC advice prior to making any trade negotiating offers to foreign countries on U.S. duties, import restrictions, or other trade barriers.

House bill

The House bill expands the scope of the summary requirement to include information and advice about services, foreign direct investment, and intellectual property.

Senate amendment

The Senate amendment requires the President, in determining whether to make negotiating offers and in determining the nature and scope of offers, to take into account any advice or information or reports by the ITC, any advisory committee, or any public hearings with respect to any article or domestic industry that is sensitive or potentially sensitive to imports.

Conference agreement

The House recedes, with an amendment to include information and advice about services, foreign direct investment, and intellectual property in the summary.

PART 3—OTHER TRADE AGREEMENT AND NEGOTIATION PROVISIONS

Implementation of Nairobi Protocol (secs. 881-894 of House bill; sec. 950 of Senate amendment; sec. 1121 of conference agreement)

Present law

The Trade and Tariff Act of 1982 provided for temporary implementation of the terms of the Nairobi Protocol.

The applicable provisions expired August 11, 1985.

House bill

The House bill repeals the 1982 Act, permits ratification of the Protocol and makes the following other changes:

Amends, repeals, and creates tariff provisions to incorporate the duty-free treatment of certain articles agreed to by the United States.

—Provides duty-free entry for specified printed matter, photographic films, specified visual and auditory material, tools for use with scientific instruments and apparatus, and most imported articles for the blind or for other physically or mentally handicapped persons.

—Empowers the President to terminate oor narrow, or impose conditions on, the duty-free treatment granted to the tools for scientific instruments and articles for the handicapped.

—Permits the President to expand the scope of the duty-free treatment of the visual and auditory material.

—Modifies the procedures to obtain duty-free eligibility for scientific apparatus and provides for collection of statistical information for imports of articles for the handicapped.

The provision is retroactive to August 12, 1985.

Senate amendment

The Senate amendment is substantially the same as the House bill, except there is no section equivalent to section 891 which modifies procedure to obtain duty-free eligibility for scientific apparatus.

Conference agreement

The House recedes.

Implementation of U.S.-European Communities Agreement on Citrus and Pasta (sec. 118 of House bill; sec. 946 of Senate amendment; sec. 1122 of conference agreement)

Present law

No provision.

House bill

The House bill grants the President authority to proclaim specified reductions in rates of duty on a specified list of articles on

an appropriate date to implement tariff reductions agreed to by the United States in the agreement with the European Communities (EC) on citrus and pasta concluded February 24, 1987. The President is authorized to modify or terminate by proclamation any of the reductions at any time.

Senate amendment

The Senate amendment enacts specified reductions in duties on a specified list of articles as of 15 days after date of enactment to implement tariff reductions agreed to by the United States in the agreement with the EC on citrus and pasta concluded February 24, 1987. The Senate amendment also enacts new tariffs on imported pasta equal to the value of the EC subsidy (as calculated monthly by USDA) as of July 1, 1987, until USTR certifies to Congress that the EC has agreed to eliminate or fully offset the subsidy.

Conference agreement

The Senate recedes, with an amendment requiring that each semiannual report submitted by the USTR to the Congress under present law on section 301 actions include an assessment of whether the EC is in compliance with the pasta agreement.

No tariff reductions will go into effect until after September 30, 1988.

It is the intent of the conferees that if the USTR determines the EC is not in compliance with the pasta agreement, this will be treated as a trade agreement violation under section 301.

Negotiations on Currency Exchange Rates (sec. 126 of House bill; sec. 108 of Senate amendment; sec. 1124 of conference agreement)

Present law

No provision.

House bill

The House bill contains a separate provision under Enforcement of U.S. Rights under Trade Agreements and Response to Certain Foreign Trade Practices (section 301).

Senate amendment

Whenever during negotiations of trade agreements, the President determines that—

a. a foreign country that is party to the negotiations manipulates currency exchange rates and maintains investment barriers, discourages internal investment, or engages in a pattern of other acts, policies, or practices for the purpose of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in trade;

b. the country's currency is substantially undervalued against the U.S. dollar; and

c. the country has a material global current account surplus;

the President must initiate bilateral currency negotiations with the country on an expedited basis.

Conference agreement

The House recedes, with a substitute amendment that requires that whenever in the course of negotiating a trade agreement the President is advised by the Secretary of the Treasury that a foreign country that is a party to the negotiations manipulates its currency exchange rate, the President shall initiate exchange rate negotiations with that country on an expedited basis.

SUBTITLE B—IMPLEMENTATION OF HARMONIZED TARIFF SCHEDULE (sec. 113 of House bill; sec. 937 of Senate amendment; secs. 1201-1217 of conference agreement)

Present law

No provision. Section 102 of the Trade Act of 1974 authorized nontariff agreements but was not applicable to agreements which involve comprehensive changes in U.S. tariffs.

House bill

The House bill authorizes the use of the renewed nontariff agreement authority under "fast track" Congressional procedures for a subsequent bill to approve and implement the International Convention on the Harmonized Commodity Description and Coding System: 90 calendar day advance notice to Congress prior to entering into the agreement, 45 legislative days for Committee and 15 legislative days for House/Senate consideration of an implementing bill.

Senate amendment

The Senate amendment makes Congressional findings that establishment of a uniform international tariff classification system will be of significant U.S. benefit and implementation of the Harmonized System on January 1, 1988, is highly desirable and should be achieved by early Congressional approval of implementing legislation.

The Senate amendment also provides an expedited "fast track" Congressional implementing procedure for Harmonized System approval than for other trade agreements: The President must notify the Congress within 15 days after enactment of his intent to submit implementing legislation; he must submit the agreement and draft bill within 30 days after the notice and after consulting with the House Ways and Means and Senate Finance Committees; Committee and floor consideration are each limited to 10 legislative days.

Conference agreement

The conferees agreed to include the implementing legislation for the Harmonized System in H.R. 3, rather than "fast track" approval authority for a subsequent separate implementing bill. The effective date for implementation of the Harmonized System Convention (Convention) shall be date of enactment; the effective date of implementation of the Harmonized Tariff Schedules (HTS) shall be January 1, 1989.

Subtitle B provides for Congressional approval of the Convention, the enactment of the HTS to replace the existing Tariff Schedules of the United States (TSUS), and the establishment of an appropriate administrative framework for the implementation of the Convention. The implementation of the Harmonized System culminates a long process begun with the enactment of section 608 of the Trade Act of 1974 (Public Law 93-618). The HTS has undergone intense review by the Congress, the Administration, our trading partners, and the public, including scrutiny by affected private sector groups.

The conferees believe that the HTS fairly reflects existing tariff and quota treatment and that the conversion is essentially revenue-neutral. Enactment of the tariff and quota treatment provided in this subtitle is intended to supersede and replace existing treatment as a matter of domestic law. The conferees find that any changes in the rates of duty are consequential to the process of converting to the new nomenclature, and are necessary to reflect an overall balance of tariff concession commitments between the United States and its trading partners in the GATT. Some of the rate increases in the United States conversion respond to our trading partners' failure to make appropriate commitments in the GATT negotiations on the Harmonized System. Although the U.S. conversion does meet our GATT obligations, some outstanding tariff issues resulting from enactment of the HTS are likely to reemerge. Any outstanding problems resulting from the GATT tariff negotiations may appropriately be resolved in the context of the Uruguay Round.

Status of Column 1

The provisions of section 1204(c) are intended by the conferees solely to ensure a solid legal foundation for the new tariff and to clarify the status of column 1 provisions where, for instance, rates proclaimed by the President have been subsequently modified by legislation. The statutory status given to column 1 provisions is not intended in any way to alter or diminish the authority of the President under existing or future law to modify the provisions of the tariff.

Generalized System of Preferences (GSP)

With reference to section 1211(b) and the implementation of the Generalized System of Preferences after the HTS enters into effect, the conferees intend that the term "article" in sections 504(c) and 504(d) of the Trade Act of 1974 (19 U.S.C. 2464(c) and 2464(d) in general refer to the eight-digit tariff item numbers of the HTS. Exceptions may be made to this rule if necessary to ensure that an article is a coherent product category.

Agency Responsibilities

Sections 1209 and 1210 set out the roles of the United States agencies principally responsible for the Harmonized System. These provisions are meant to ensure a broad base of participation in the work relating to the HTS and to the Convention. The USTR will be responsible for overall trade policy coordination with respect to the Convention, with the advice of the Trade Policy Committee. The Customs Service will be responsible for interpreting and applying the HTS, and will continue to take a lead role in the CCC's Harmonized System Committee, particularly with respect to issues regarding United States interpretation and application of the HTS to particular products. The ITC is also expected to play a lead role in formulating United States positions for, and representing the United States in, the CCC's Harmonized System Committee, particularly with regard to assuring that the Convention recognizes the needs of the U.S. business community for a nomenclature that reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices. The Commerce Department's Bureau of the Census will be responsible for ensuring that United States positions with respect to the HTS reflect broader interests in consistency and comparability of statistical reporting.

The conferees intend that the views of the private sector on the Convention be sought systematically through direct contacts with appropriate private sector advisory committees, trade organizations or trade groups, and through product experts in U.S. agencies such as the Department of Agriculture and the Department of Commerce.

Status of Explanatory Notes

The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They provide a commentary on the scope of

each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.

The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

Prior Administrative and Judicial Decisions

In light of the significant number and nature of changes in nomenclature from the TSUS to the HTS, decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTS. Nevertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS.

ADP Equipment

The conferees note that section 1215 and the relevant provisions of the HTS suspending the duty on certain automatic data processing equipment are intended to provide a pragmatic approach to an ongoing dispute concerning the proper classification of such equipment in the TSUS. Neither section 1215 nor the duty suspension provisions are intended in any way to express a Congressional view on the ongoing TSUS classification dispute.

Electricity and Electrical Energy

Electricity and electrical energy were considered to be "intangibles" under the existing TSUS and therefor not subject to the entry requirements applicable to imported articles. Although the HTS has a specific heading for "electrical energy," additional U.S. legal note 8(b) in chapter 27 of the HTS provides that electrical energy shall continue to be exempt from statutory entry requirements, but instead "shall be entered on a periodic basis in accordance with regulations to be prescribed by the Secretary of the Treasury." This provision will facilitate the collection of import statistics on electrical energy without otherwise affecting its legal status under U.S. trade laws.

SUBTITLE C—RESPONSE TO UNFAIR INTERNATIONAL TRADE PRACTICES

PART 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES (SECTIONS 301-306 OF THE TRADE ACT OF 1974)

Mandatory Initiation of Section 301 Investigations (sec. 305 of Senate amendment)

Present law

A section 301 investigation may be initiated on petition of an interested person or by motion of the USTR. There is no mandatory initiation requirement.

House bill

No provision.

Senate amendment

The Senate amendment requires the USTR, on the basis of acts, policies, and practices identified in the annual NTE report, to self-initiate a section 301 investigation of cases the pursuit of which is most likely to result in the greatest expansion of U.S. exports, either directly or through establishment of a beneficial precedent, unless the USTR determines, after consulting a majority of the domestic industry affected, that initiation would be detrimental to other efforts to eliminate the acts, policies, or practices.

Conference agreement

The Senate recedes.

The conference agreement provides that with respect to *enumerated* specific causes of action in present law or added by the conference agreement, the USTR would have discretion in the initiation of investigations to determine whether action would be effective in addressing the foreign country's practice or barrier.

Determination of Actionable Foreign Acts, Policies, or Practices; Decisions on Action

a. Transfer of authority to the USTR (secs. 121, 124, 125 of House bill; sec. 306 of Senate amendment; sec. 1301 of conference agreement)

Present law

On the basis of an investigation (by petition or self-initiation) and consultations with the foreign country concerned, the USTR recommends to the President what action, if any, he should take with regard to the matters under investigation. The President determines whether action is appropriate and what action, if any, should be taken. The President is not required specifically to determine whether section 301 criteria are satisfied by the particular foreign act, policy, or practice, unless he takes action under section 301. The President may also take action on his own motion.

House bill

Determination. The House bill transfers to the USTR the authority to determine whether and what section 301 criteria are met by the particular foreign act, policy, or practice, and requires a specific formal determination in all cases of whether the act, policy, or practice is actionable under section 301.

Decision on action and implementation. The House bill also transfers to the USTR the authority to decide and implement any section 301 action, if the USTR determination is affirmative, subject to the specific direction, if any, of the President. The President would not retain separate authority to take action on his own motion, but may direct the USTR to take section 301 action.

Senate amendment

Determination. The Senate amendment transfers to the USTR the authority to determine whether section 301 criteria are met by the particular foreign act, policy, or practice, and requires a specific formal determination of whether the act, policy, or practice is actionable under section 301, which must be submitted to the President and published in the Federal Register.

Decision on action and implementation. The President retains the authority to decide and implement action.

Conference agreement

The Senate recedes.

b. Obtaining information (sec. 122 of House bill)

Present law

The investigatory procedures do not contain any statutory provisions with respect to the obtaining, verification, or use of information obtained by the USTR for making determinations.

House bill

The House bill adds provisions applicable to all investigations which—

a. require the USTR to direct appropriate inquiries to foreign governments to obtain relevant information;

b. authorize the USTR to request the foreign government to provide documentation or permit verification of the information as the USTR deems appropriate; and

c. authorize the USTR to disregard all or part of the foreign country information and use best information available if the foreign information is not timely, complete, or adequate, or is not sufficiently documented or verified.

Senate amendment

No provision.

Conference agreement

The House recedes.

c. Presentation of views (secs. 121, 124 of House bill; sec. 1301 of conference agreement)

1. Determinations and action decisions

Present law

Before recommending that the President take action, the USTR, unless he determines expeditious action is required—

a. shall provide opportunity for the presentation of views, including a hearing if requested by any interested person;

b. shall obtain advice from appropriate private sector advisory committees; and

c. may request the views of the International Trade Commission (ITC) regarding the probable impact on the U.S. economy of taking action.

If expeditious action is required, these requirements apply only after making the recommendation to the President.

House bill

No provision.

Senate amendment

The Senate amendment requires the USTR to provide an opportunity for the presentation of views before making unfair trade practice determinations, as well as before making recommendations, unless expeditious action is required.

Conference agreement

The House recedes, with a conforming amendment to apply the same prior opportunity for views to both the determination on whether an act, policy, or practice is actionable and the determination on action by the USTR.

2. Advance notice

House bill

The USTR must provide a minimum 30-day advance notice for the presentation of views by interested persons.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment to add the phrase, "unless expeditious action is required."

3. Special consultations

House bill

In export targeting cases, the USTR must also consult with representatives of the affected U.S. industry and workers and other interested persons concerning the nature of appropriate remedial action, including possible non-trade measures to enhance the international competitiveness of the industry.

Senate amendment

No provision.

Conference agreement

The House recedes.

4. Interested persons

House bill

The House bill adds a definition of "interested persons" for purposes of presenting views on the issues raised in petitions, on USTR action decisions, and on modification or termination of actions. The term "interested persons" specifically includes, but is not limited to, domestic firms and workers, representatives of consumer interests, and U.S. product exporters that may be affected.

Senate amendment

The Senate amendment specifically includes as an interested person an industrial user of any goods or services involved in the investigation that may be the subject of actions.

Conference agreement

The Senate recedes with an amendment to include the Senate provision in the definition of "interested persons."

d. Consideration of agricultural impact (sec. 121 of House bill)

Present law

No provision. The President determines whether and what section 301 action is appropriate; the private sector has an opportunity to present views before USTR recommends action, unless expeditious action is required.

House bill

The USTR must, before determining to take section 301 action that would restrict imports, take into account the likely impact such action would have on U.S. agricultural exports. The public notice of the USTR's action decision must include a statement regarding the likely impact, if any, of an import restricting action on U.S. agricultural exports.

Senate amendment

No provision.

Conference agreement

The House recedes.

Time Limits

a. Foreign consultations (sec. 123 of House bill; sec. 1301 of conference agreement)

Present law

On the date the USTR decides to initiate a section 301 investigation, he is required to request consultations with the foreign country concerned. If the case involves a trade agreement, and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the USTR is required to request promptly that formal dispute settlement proceedings be initiated.

The USTR may delay the request for consultations with the foreign government for up to 90 days after an investigation is initiated in order to verify or improve the petition to ensure an adequate basis for consultations.

House bill

The House bill requires the USTR to request dispute settlement proceedings at the earlier of the close of the consultation period specified in the agreement or 5 months after consultations began.

The USTR must consult with the petitioner before deciding to delay consultations with the foreign government.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

b. Unfairness determinations and decisions (sec. 124 of House bill; sec. 306 of Senate amendment; sec. 1301 of conference agreement)

Present law

Under present law, the USTR must make a recommendation to the President on what section 301 action he should take, if any, not later than—

a. 7 months after initiation of the investigation if the petition alleges only an export subsidy covered by the General Agreement on Tariffs and Trade (GATT) subsidies agreement;

b. 8 months after initiation of the investigation if the petition alleges a domestic subsidy or both export and domestic subsidies covered by the GATT subsidies agreement;

c. 30 days after the dispute settlement procedure is concluded if the petition involves a trade agreement other than the subsidies agreement; or

d. 12 months after initiation of the investigation in any other case.

These time limits may be extended by up to 90 days if the request for foreign consultations was delayed.

House bill

The House bill requires the USTR to determine whether section 301 criteria are met, and, if affirmative, to decide what action, if any, he shall take, not later than—

a. 7 months after initiation of the investigation if only an export subsidy is alleged (same as present law);

b. 8 months after initiation of the investigation if a domestic subsidy or both domestic and export subsidies are alleged (same as present law);

c. 30 days after conclusion of dispute settlement proceedings or 18 months after initiation of the investigation, whichever occurs first, if a trade agreement other than the subsidies agreement is involved; or

d. 12 months after initiation of the investigation in any other case (same as present law).

In export targeting cases, the USTR must make a determination within 6 months after initiating an investigation (decision on action within 12 months). A separate provision requires a determination and decision by the USTR on priority intellectual property rights cases within 6 months, or within 12 months in certain exceptional circumstances.

These time limits may be extended by up to 90 days to conform to any period of delay in the request for foreign consultations.

Senate amendment

The Senate amendment requires the USTR to determine whether section 301 criteria are met by no later than 9 months after an investigation is initiated. In export targeting cases the determination must be made no later than 6 months after initiation.

In priority intellectual property rights cases, the determination is required within 6 months, within 9 months in certain exceptional circumstances.

These time limits may be extended by up to 90 days to conform to any period of delay in the request for foreign consultations.

The Senate amendment requires the USTR to make a recommendation to the President on what actions he should take at least 30 days before the President is required to take action.

Conference agreement

The Senate recedes, with an amendment to apply the 12-month limit to cases involving subsidies covered by the GATT subsidies agreement, as well as to any cases not involving a trade agreement, including export targeting cases. There is a separate agreement on priority intellectual property rights cases.

c. Time limit for action (sec. 121 of House bill; sec. 306 of Senate amendment; sec. 1301 of conference agreement)

Present law

Under present law, the President must determine within 21 days after he receives a recommendation from USTR what action, if any, he will take. The President may also decide to take action on his own motion at any time. There are no time limits on retaliatory action or on its implementation.

House bill

The House bill requires the USTR, subject to the specific direction, if any, of the President, to implement any section 301 action within 30 days after making a decision to take action.

USTR may delay implementation of any retaliatory action for up to 180 days if—

a. the petitioner or the domestic industry requests a delay; or

b. the USTR determines that substantial progress is being made or that delay is necessary or desirable to obtain U.S. rights or a satisfactory solution with respect to the act, policy, or practice, or export targeting.

Senate amendment

Trade agreement cases involving formal dispute settlement proceedings. The Senate amendment requires the President to act on the earlier of 6 months after the date on which a preliminary or final dispute settlement ruling is issued consonant with the USTR's affirmative determination, or 19 months after the investigation is initiated. The 19 months deadline may be postponed by the length of any period of delay in formal dispute settlement proceedings requested by the petitioner or a majority of representatives of the domestic industry that would benefit, or a delay for which they are responsible.

Other cases. The Senate amendment requires the President to act within 15 months after initiation of an investigation. Action may be postponed for a 60-day period if the President submits to the Congress a written statement which—

a. certifies that progress is being made—

(1) to enforce the U.S. rights that are the subject of the affirmative USTR determination;

(2) to eliminate or reduce the acts, policies, or practices that are the subject of the affirmative determination; and

b. to fully describe the factual basis on which the certification is made.

No more than two postponements may be made in the same investigation.

The Senate amendment requires the President to act on priority intellectual property rights cases within 30 days after an affirmative determination, or 4 months after an affirmative determination in exceptional circumstances investigations.

Conference agreement

The Senate recedes, with an amendment that authorizes the USTR to postpone implementation of section 301 action for up to 180 days if (1) the petitioner or a majority of the domestic industry that would benefit requests a delay, or (2) the USTR deter-

mines that substantial progress is being made or that delay is necessary or desirable to obtain U.S. rights or a satisfactory solution with respect to the act, policy, or practice.

d. Notice and report requirements (sec. 121 of House bill; sec. 1301 of conference agreement)

Present law

Under present law, the President must publish notice of his determination and the reasons therefore in the *Federal Register*.

House bill

The House bill requires the USTR to publish promptly in the *Federal Register* notice of each decision to take action, each delay in implementing action, and the reasons for the decision or delay.

The House bill also adds a requirement that the USTR report promptly in writing to the Congress on each action taken or the reason for taking no action on practices subject to mandatory action or to eliminate export targeting.

Senate amendment

No provision.

Conference agreement

The House recedes, with an amendment to require the USTR to publish a notice in the *Federal Register* of the determination on whether the practice is actionable under section 301 and on action in each case.

Section 301 Action

a. Mandatory/discretionary action (sec. 121 of House bill; sec. 306 of Senate amendment; sec. 1301 of conference agreement)

Present law

If the President determines that action is appropriate:

a. to enforce U.S. rights under any trade agreement; or

b. to respond to any act, policy, or practice of a foreign country that (1) is inconsistent with the provisions of, or otherwise denies U.S. benefits under, any trade agreement, or (2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce;

then the President—

a. shall take all appropriate and feasible action within his power to enforce such rights, or to obtain the elimination of the act, policy, or practice; and

b. may (1) suspend, withdraw, or prevent the application of trade agreement concessions; and (2) impose duties or other import restrictions on the goods of, and fees or restrictions on the services of, the foreign country for such time as he deems appropriate; and

c. may also restrict the terms and conditions, or deny issuance, of any prospective service sector access authorization (e.g., licenses).

House bill

Mandatory action:

The House bill requires the USTR, subject to the specific direction, if any, of the President, to take retaliatory action and to take all other appropriate and feasible action within the power of the President that he directs the USTR to take to enforce U.S. rights or to obtain the elimination of the act, policy, or practice if the USTR determines that—

a. U.S. rights under a trade agreement are being denied; or

b. an act, policy, or practice of a foreign government either (1) violates or is inconsistent with or otherwise denies U.S. benefits under a trade agreement; or (2) is otherwise "*unjustifiable*" and burdens or restricts U.S. commerce.

The form of retaliatory action is discretionary, but the amount must be equivalent in value to the burden or restriction imposed by the foreign unfair practice on U.S. commerce.

Exceptions:

Retaliation would not be required if—

a. the GATT Contracting Parties determine or a GATT panel reports that U.S. trade agreement rights are not being denied or the act, policy, or practice is not a violation of, or inconsistent with, U.S. rights or does not deny, nullify, or impair trade agreement benefits; or

b. the USTR finds that—

(1) the foreign country is taking satisfactory measures to grant U.S. trade agreement rights;

(2) the foreign government has agreed to eliminate or phase out the act, policy, or practice, or has agreed to an imminent solution to remove the burden or restriction on U.S. commerce that is satisfactory to the USTR;

(3) it is impossible for the foreign country to achieve the results under (1) or (2), but it agrees to provide the United States compensatory trade benefits that are satisfactory to the USTR; or

(4) such action is not in the U.S. national economic interest because it would result in such interests being more adversely affected if action were taken than if not, and the USTR reports the reasons to the Congress.

Discretionary action:

The USTR would have discretionary authority, as under present law, to take all appropriate and feasible action within his power to obtain the elimination of any act, policy, or practice he determines is "*unreasonable*" or "*discriminatory*," subject to the specific direction, if any, of the President.

Senate amendment

If the USTR makes an affirmative determination in *any case*, the President *is required* to take whatever actions authorized by section 301 are necessary to enforce all rights, and to eliminate or offset all acts, policies, or practices subject to the determination.

Exceptions:

The President is not required to take action if—

a. the GATT Contracting Parties make a determination, or a ruling is issued under the dispute settlement procedures of any trade agreement other than the GATT, that conflicts with the USTR's affirmative determination;

b. an agreement is entered into under which the foreign country involved agrees to eliminate or adequately offset the act, policy, or practice and enforce the rights, and a majority of the representatives of the U.S. industry that would benefit from enforcement of the rights, or elimination of the acts, policies, and practices agree, or the petitioner, if any, agrees;

c. the President certifies to the Congress that taking action would cause serious harm to the U.S. national security;

d. the President certifies to the Congress that the enforcement of the rights and elimination of the acts, policies, and practices is impossible and the foreign country enters into an agreement to provide adequate compensation in the same economic sector as the domestic industry (or the economic sector as closely related as possible); or

e. in cases involving "unreasonable" or "discriminatory" (not "unjustifiable") acts, policies, or practices or in priority intellectual property rights cases, the President certifies to the Congress that the elimination of such acts, policies, and practices is impossible, and retaliation would not be in the national economic interest.

Conference agreement

The Senate recedes, with an amendment that deletes the national economic interest exception to mandatory action cases in the House bill and adds the following two waivers to mandatory action: (1) in extraordinary cases, where action would have an adverse impact on the U.S. economy substantially out of proportion to the benefits of action, taking into account the impact of not acting on the credibility of section 301; and (2) if action would cause serious harm to the U.S. national security. A second amendment adds rulings under dispute settlement procedures of any trade agreement other than the GATT to the first exception to mandatory action. This exception would encompass any bilateral trade agreement under which both the United States and the other party are bound by GATT rules and procedures.

The conferees note that in the exception to mandatory retaliation relating to compensation agreements the standard of "impossibility" is a high one, but is not meant to connote physical impossibility.

In "unreasonable" cases there is a presumption that the USTR would take action on such cases where it has a reasonable indication that such action will be effective in changing the foreign country's practice or barrier.

The conferees note that a number of European countries restrict U.S. producers of steam turbine generating equipment from their markets. The conferees hope that the Administration will consider the use of the provisions of this part to address this and similar trade restrictions.

b. Type of action (sec. 121 of House bill; sec. 1301 of conference agreement)

Present law

The choice of the type of import restrictive retaliatory action is totally discretionary.

House bill

The type of retaliatory action in any case is discretionary, but preference must be given to tariff increases or to removal of tariff preferences over quantitative restrictions; consideration must be given to a possible timetable for transferring any quota retaliation to an equivalent tariff.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

c. Sectoral scope of action (sec. 121 of House bill; sec. 306 of Senate amendment; sec. 1301 of conference agreement)

Present law

Under present law, the President may act with respect to any goods or sector without regard to whether the goods or sector were involved in the act, policy, or practice.

House bill

Requires the USTR to give preference in all cases to action on the same goods or sector and, in any compensation agreement, to seek benefits from the foreign country in the same goods or sector.

Senate amendment

Requires that any compensation agreement provide trade benefits in the economic sector of which the U.S. domestic industry is a part, or in the economic sector as closely related as possible to such economic sector.

Conference agreement

The House recedes, with an amendment that requires compensation agreements to provide trade benefits in the same or a closely related economic sector, unless such benefits are not feasible or benefits would be more satisfactory in another sector.

d. Negotiated settlements (sec. 307 of Senate amendment; sec. 1301 of conference agreement)

Present law

There is no statutory provision under present law, but USTR in practice negotiates agreements with foreign countries to resolve section 301 cases. No statutory authority is provided for agreements to offset or eliminate the burden or restriction on U.S. commerce, rather than to obtain the elimination of foreign unfair acts, policies, or practices.

House bill

No provision.

Senate amendment

The Senate amendment adds specific authority for the President to enter into binding agreements with a foreign country that fully offset or eliminate any burden or restriction on U.S. commerce resulting from the foreign act, policy, or practice.

Conference agreement

The House recedes, with an amendment that authorizes the USTR to enter into binding agreements that commit a foreign country to eliminate or phase out the practice, to eliminate the burden or restriction on U.S. commerce, or to provide satisfactory compensation.

e. Generalized System of Preferences (GSP) withdrawal (sec. 121 of House bill; sec. 307 of Senate amendment)

Present law

Section 301 authorizes the President to take all appropriate and feasible action within his power; he is also authorized to impose duties. Section 504 of the Trade Act of 1974 authorizes the President to withdraw, suspend, or limit GSP duty-free treatment with respect to any article or country.

House bill

The House bill adds specific authority for the USTR to withdraw or not proclaim GSP beneficiary status to a developing country or to deny GSP duty-free treatment to any product of a beneficiary developing country as a form of section 301 action.

Senate amendment

The Senate amendment is identical to the House bill, except the authority to act remains with the President.

Conference agreement

The conferees agreed to strike the House bill and the Senate amendment, since the President has the authority under present law to withdraw or deny GSP duty-free treatment as a section 301 action.

f. Use of Export Enhancement Program (sec. 308 of Senate amendment)

Present law

Section 301 authorizes the President to take all appropriate and feasible action within his power to enforce U.S. rights or to obtain the elimination of a foreign unfair trade practice.

House bill

No provision.

Senate amendment

If the USTR initiates an investigation of any foreign act, policy, or practice he has reason to believe may impair, or threaten to impair, U.S. sales of agricultural commodities or products of agricultural commodities in foreign markets, the USTR shall, after consulting with the Secretary of Agriculture and other appropriate agency heads, determine whether the provision of surplus commodities and the products of surplus commodities under the Export Enhancement Program to U.S. exporters, users, and processors and foreign purchasers would be an appropriate action to offset the foreign act, policy, or practice. The USTR must report to the President and the Congress on any determination and the reasons, including recommendations on the scope and application of any directive the President may issue if the determination is affirmative.

If affirmative, the President shall direct the Commodity Credit Corporation to provide to the extent appropriate surplus agricultural commodities under the program to U.S. exporters, users, processors and foreign purchasers to offset the act, policy, or practice, or submit a written statement to the Congress explaining why he declined to issue a directive.

The President shall revoke a directive if the USTR determines the act, policy, or practice is not actionable under section 301 or if it is eliminated or fully offset.

Conference agreement

The Senate recedes, since the President has the authority under present law to use the Export Enhancement Program as a section 301 action.

g. Service sector access authorization (sec. 911 of Senate amendment)

Present law

In addition to other retaliatory action, the President may restrict the terms and conditions or deny the issuance of any service sector access authorization (e.g., license) that permits a foreign supplier of services access to the U.S. market.

House bill

No provision.

Senate amendment

The Senate amendment expands the definition of "service sector access authorization" to also apply to a foreign supplier of goods related to a service.

Conference agreement

The Senate recedes.

The Senate amendment is unnecessary since the issue was addressed in the Statement of Managers on the Trade and Tariff Act of 1984, which clarified that the existing authority with respect to imported goods should be used for action against foreign goods and that the service sector access authority should be used on goods only to the extent that actions involving services must be taken with respect to goods associated directly with those services.

Subsequent Action

a. Commercial effects report (sec. 127 of House bill; sec. 1301 of conference agreement)

Present law

Under present law, the USTR is required to submit a semiannual report to the Congress describing petitions filed, determinations made, the current status of each proceeding, and the actions taken, or the reasons for no action.

House bill

The House bill adds a requirement that the report describe the commercial effects of actions taken.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

b. Monitoring/enforcement of foreign actions (sec. 125 of House bill; sec. 1301 of conference agreement)

Present law

No provision.

House bill

The USTR must monitor implementation of any measure, or compliance with any settlement agreement, by a foreign country.

If the foreign country is not implementing or complying with the settlement, the USTR shall decide what action he shall take under section 301, to be treated as a violation of a trade agreement subject to mandatory action as if it were a decision on the original investigation (i.e., section 301 authority, time limits, consultation, and reporting requirements apply). Before taking any action, the USTR must consult with the petitioner and the domestic industry and provide an opportunity for public views.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

c. Modification/termination (sec. 125 of House bill; sec. 306 of Senate amendment; sec. 1301 of conference agreement)

Present law

No specific provision.

House bill

The House bill explicitly authorizes the USTR to modify or terminate a section 301 action at any time if—

a. the GATT or a GATT panel finds the action violates or is inconsistent with U.S. international obligations or the foreign act, policy, or practice is not a violation or does not otherwise deny, nullify, or impair U.S. trade agreement benefits; or

b. the USTR determines (1) the foreign act, policy, or practice is being eliminated or phased out satisfactorily; or (2) the action is not effective or its continuation is not in the national economic interest.

The USTR must promptly publish and report to the Congress any modification or termination and the reasons.

The House bill also requires the USTR to conduct a biennial review and assessment of the results and commercial effects of each section 301 action, and to decide whether any modification or termination is appropriate, after consulting with the petitioner and representatives of the domestic industry and providing an opportunity for public views by other interested persons affected.

Senate amendment

The Senate amendment explicitly authorizes the President to modify or terminate an action if—

a. any of the exceptions to the initial section 301 action subsequently apply, or

b. the burden or restriction on the U.S. economy of the denial of rights or of the acts, policies, or practices subject to the affirmative determination has increased or decreased.

The President must publish notice of his determination or action and the reasons in the Federal Register.

The Senate amendment also provides that any action will automatically terminate if it has been in effect during any four-year period and neither the petitioner nor any representative of the benefitting domestic industry submits to the USTR a written request for continuation during the last 60 days of the four-year period. USTR must notify by mail the petitioner and representatives of the domestic industry at least 60 days before the date of termination.

If a request is submitted, USTR shall conduct a formal review of—

a. the effectiveness of the action and of other actions that could be taken (including actions against other goods or services) to achieve the enforcement of all U.S. rights, or the elimination or offsetting of all the foreign acts, policies, and practices that were the subject of the action; and

b. the effects of such actions on the U.S. economy, including consumers.

USTR shall submit a report on the review to the President and the Congress and include in the report any recommended action modifications. Upon receiving the report, the President may modify the actions.

Conference agreement

The Senate recedes, with amendments (1) to substitute the same applicable criteria under the conference agreement for exceptions to cases involving mandatory action and, in other cases, the criteria for discretionary action, or if the burden or restriction on U.S. commerce increases or decreases; and (2) to substitute the termination provisions in the Senate amendment for the biennial review in the House bill.

Actionable Foreign Acts, Policies, or Practices

a. U.S. trade with third countries (sec. 121 of House bill; sec. 307 of Senate amendment)

Present law

Unjustifiable, unreasonable, or discriminatory foreign acts, policies, or practices must also burden or restrict U.S. commerce to be actionable under section 301.

House bill

The House bill makes explicit the present administrative practice that the burden or restriction on U.S. commerce under present law may be an effect on U.S. trade with third countries, as well as on bilateral trade.

Senate amendment

The Senate amendment specifies that acts, policies, or practices of a foreign country which "burden" U.S. commerce include, but are not limited to—

a. those which have an adverse effect on trade between the United States and a third country;

b. the subsidization of exports of such foreign country that results in the displacement of U.S. exports to a third country;

c. the imposition of import restrictions or export performance requirements that result in the diversion of exports of a third country to U.S. markets; and

d. the enforcement of trade restraining agreements that result in the diversion of exports of a third country to U.S. markets.

Conference agreement

The conferees agreed to strike the House bill and the Senate amendment, since the effect on U.S. trade with third countries is included under present law.

b. Threat of burden on U.S. commerce (sec. 306 of Senate amendment)

Present law

Unjustifiable, unreasonable, or discriminatory acts, policies, or practices must be a burden or restriction on U.S. commerce to be actionable.

House bill

No provision, except export targeting is actionable if it threatens to be a significant burden or restriction on U.S. commerce.

Senate amendment

Makes any unfair act, policy, or practice actionable if it "threatens" to burden or restrict U.S. commerce.

Conference agreement

The conferees agreed to strike the House bill and the Senate amendment.

c. Export targeting (sec. 121 of House bill; secs. 306, 307 of Senate amendment; sec. 1301 of conference agreement)

Present law

Section 301 applies to individual export targeting practices to the extent they otherwise meet section 301 criteria.

Present law defines "unreasonable" as foreign acts, policies, or practices not necessarily in violation of, or inconsistent with, U.S. international legal rights, but otherwise deemed to be "unfair and inequitable." The definition specifically includes the denial of fair and equitable market opportunities, opportunities for establishment of an enterprise, and provision of adequate and effective protection of intellectual property rights.

House bill

The House bill makes "export targeting" specifically actionable if the USTR determines that a policy or practice of foreign export targeting exists and is, or threatens to be, a *significant* burden or restriction on U.S. commerce. The USTR may consult with appropriate Federal agencies in making the determination. The USTR must publish notice of the determination in the Federal Register."

"Export targeting" is defined as "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 such enterprise, industry, or group to become more competitive in the export of any class or kind of merchandise."

The USTR, subject to the specific direction, if any, of the President, is required to take action against export targeting which is a significant burden or restriction on U.S. commerce, unless he finds such action is not in the U.S. national economic interest because it would result in such interests being more adversely affected if action were taken than if not, and the USTR reports the reasons to the Congress.

Action may be—

(1) retaliation against the goods or services of the foreign country; and/or

(2) entry into an agreement providing an imminent solution by the foreign country to the significant burden or restriction on U.S. commerce, or compensatory trade benefits satisfactory to the USTR.

If the national economic interest waiver is exercised, the USTR must convene a private sector panel of experts, including representatives of the domestic industry and labor, to advise on measures to promote the industry's competitiveness. The panel must report to the USTR within 6 months; the USTR must forward the report to the Congress with his recommendations.

In any case, the USTR, subject to the specific direction, if any, of the President, may also take administrative actions and, if necessary, propose legislation to implement any other action to restore or improve the international competitiveness of the domestic industry.

Action is *discretionary* if the export targeting *threatens* to be a significant burden or restriction on U.S. commerce.

Any retaliatory action must affect goods or services of the foreign country in an amount equivalent in value to the burden or restriction on U.S. commerce. Any action shall, to the extent possible, reflect the full benefit level of the targeting to the beneficiary over the period during which it has an effect.

Senate amendment

The Senate amendment specifically includes export targeting in the definition of "*unreasonable*" acts, policies, or practices. The definition of export targeting is identical to the House bill, but also includes a list of illustrative practices—

a. protection of home market;

b. promotion or toleration of cartels;

c. special restrictions on technology transfer imposed for reasons of commercial advantage;

d. discriminatory government procurement or other actions that limit foreign competition in a specific sector or of a specific industry and thereby promote export competitiveness of domestic firms;

e. the use of export performance requirements that limit foreign competition in a specific sector or of a specific industry and thereby promote export competitiveness; or

f. subsidization (as defined in the GATT Subsidies Agreement).

Retaliatory action is mandatory, subject to the same exceptions applicable to other "unreasonable" acts, policies, or practices.

If the President does not take retaliatory action because he certifies to the Congress that elimination of export targeting is impossible and that retaliation would not be in the national economic interest, the USTR must initiate negotiations with the foreign country to eliminate or fully offset the effects of export targeting or provide compensation. The USTR must make periodic reports to the President on the progress of actions taken. If the USTR is unsuccessful in obtaining an agreement in a reasonable time period, the President must establish an advisory panel to report within 6 months to the President and Congress recommended measures to promote the competitiveness of the affected domestic industry. The panel must consist of Presidential appointees from the private sector, including representatives of management and labor in the domestic industry affected who by education and experience are qualified to serve. On the basis of the report, the President may take administrative actions and, if necessary, propose legislation to implement any other actions to restore or improve the international competitiveness of the domestic industry. The President must submit a report to Congress within 30 days after the advisory panel report on administrative actions taken and legislation proposed.

Conference agreement

The House recedes, with amendments (1) to delete the illustrative list of practices; (2) to delete mandatory retaliation or negotiations and apply the same authority for the USTR, subject to the specific direction, if

any, of the President, as for other "unreasonable" practices; and (3) to require the USTR, rather than the President, to convene a private sector panel and to submit a report if section 301 action is not taken.

d. Worker rights (sec. 121 of House bill; sec. 307 of Senate amendment; sec. 1301 of conference agreement)

Present law

Present law defines "unreasonable" as foreign acts, policies, or practices not necessarily in violation of, or inconsistent with, U.S. international legal rights, but otherwise deemed to be "unfair and inequitable." The definition specifically includes the denial of fair and equitable market opportunities, opportunities for establishment of an enterprise, and provision of adequate and effective protection of intellectual property rights.

House bill

The House bill includes in the definition of "unreasonable" any foreign act, policy, or practice that, with respect to workers: denies the right of association; denies the right to organize and bargain collectively; permits any form of forced or compulsory labor; fails to provide a minimum age for the employment of children; and, taking into account a country's level of economic development, fails to provide standards for minimum wages, hours of work, and occupational safety and health.

The USTR may determine that the act, policy, or practice is not unreasonable if the foreign country has taken or is taking steps that demonstrate a significant and measurable overall advancement to afford the rights and standards throughout the country, including in any designated zone within such country.

Senate amendment

The Senate amendment includes in the definition of "unreasonable" those foreign acts, policies, or practices which constitute a persistent pattern of conduct that denies workers the right of association, denies workers the right to organize and bargain collectively, permits any form of forced or compulsory labor, fails to provide a minimum age for the employment of children, or fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

These acts, policies, and practices shall not be treated as unreasonable if the USTR (at the time he makes a determination under section 304 on whether the practice is actionable) determines that the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing the rights and standards throughout the country (including any designated zone), or such acts, policies, or practices are not inconsistent with the country's level of economic development. The USTR must publish such a determination and a description of the facts on which it is based in the *Federal Register*.

Conference agreement

The House recedes.

e. Market access (sec. 121 of House bill; sec. 307 of Senate amendment; sec. 1301 of conference agreement)

Present law

The definition of "unreasonable" includes any act, policy, or practice which denies fair and equitable market opportunities.

House bill

The House bill specifically includes in the denial of fair and equitable market opportunities the toleration by a foreign government of systematic anticompetitive activities by or among private firms in that country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of U.S. goods to purchasing by those firms.

Senate amendment

The Senate amendment is identical to the House bill, except it also includes activities that restrict access of U.S. services, as well as goods.

Conference agreement

The Senate recedes.

This provision reflects the growing conviction on the part of the conferees that anticompetitive, market-restrictive behavior on the part of private firms, when coupled with the failure of a foreign government to intervene to eliminate such behavior, can act as a barrier to market access which is as great as any formal government act, policy, or practice alone. This has been particularly evident in such sectors as automobile parts, soda ash, and semiconductors. To the extent such behavior acts as a burden or restriction on U.S. commerce, it would be regarded as an unfair practice which is actionable under section 301.

The inclusion of government toleration of certain anti-competitive private activities as an actionable section 301 act, policy, or practice is not intended to apply broadly to any and all purchasing decisions by private firms. It is intended to apply to government toleration of pervasive or egregious activities in a foreign country by or among private firms which result in a persistent pattern of restricted market access by U.S. firms in a particular industry. This would include situations in which purchasing policies or decisions made by a parent firm in a foreign country affect access by U.S. firms to purchasing by the parent's subsidiaries in other countries.

The provision requires that the anti-competitive behavior by or among private firms be systematic, be conducted on a basis that is inconsistent with commercial considerations, and that it be tolerated by the foreign government. This would include, but not be limited to, toleration of cartel-type behavior by or among private firms or toleration of closed purchasing behavior on the part of private firms that precludes or limits U.S. access in a concerted and systematic way. In determining whether foreign private firms engage in closed procurement practices, the USTR should examine actual levels of purchases of U.S. goods by those firms.

The conferees wish to emphasize, however, that their intent is not to regulate the business practices of foreign firms or to enforce upon foreign governments U.S. concepts of antitrust law. This provision is meant to allow the USTR and the President to take a flexible approach to these problems, and to attack trade-restrictive activities by foreign private interests only when the foreign government is in essence at least a silent partner to the restrictive practice. In determining whether the criteria of this provision are met, the USTR may continue to take into account, among other things, whether the anti-competitive foreign private activities are inconsistent with local (not U.S.) law; the flagrancy of the activities; and the degree of the effect on U.S. commerce.

f. Intellectual property licensing (sec. 307 of Senate amendment)

Present law

The same definition of "unreasonable" applies as under e. above.

House bill

No provision.

Senate amendment

The Senate amendment includes in the definition of "unreasonable" the requirement of a foreign country that intellectual property be licensed to that country or any firm of that country or that technical information regarding any product or service be submitted to such country as a condition for importation or marketing or sale of any U.S. product or service in that country.

Conference agreement

The Senate recedes.

g. Subsidized world excess capacity (sec. 307 of Senate amendment)

Present law

The same definition of "unreasonable" applies as under e. above.

House bill

No provision.

Senate amendment

The Senate amendment includes in the definition of "unreasonable" the direct or indirect provision of a subsidy (including funds provided on terms inconsistent with commercial considerations) to increase the capacity to produce a nonagricultural fungible good for which existing world production capacity (or a reasonable expectation of future world capacity) significantly exceeds existing world demand (or a reasonable expectation of future world demand).

Such an act, policy, or practice shall be treated as burdening or restricting U.S. commerce if it threatens to have an adverse impact on U.S. commerce.

The President is not required to take any action but, if the President determines action is appropriate, he shall take all appropriate and feasible action in his power to obtain the elimination of the act, policy, or practice.

Conference agreement

The Senate recedes.

h. Access to foreign technology (sec. 906 of House bill)

Present law

The same definition of "unreasonable" applies as under e. above.

House bill

The House bill includes in the definition of "unreasonable" the denial of access to foreign-government-sponsored technology, research, or development.

Senate amendment

No provision.

Conference agreement

The House recedes.

i. Mercantilist practices (sec. 307 of Senate amendment)

Present law

The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to U.S. goods, services, or investment.

House bill

No provision.

Senate amendment

The Senate amendment includes in the definition of "discriminatory" any act, policy, or practice—

a. which enables a state trading enterprise to compete in international trade with U.S. firms or make purchases or sales in international trade on any basis that is not dependent on commercial considerations (including price, quality, availability, and transportation);

b. through which a foreign country exercises its authority, influence or power for the purpose of assisting a state trading enterprise in competing in international trade with U.S. firms, or making purchases or sales in international trade, on any basis that is not dependent on commercial considerations; or

c. which fails to afford U.S. firms adequate opportunity, in accordance with customary business practice, to compete for participation in purchases from, or sales to, state trading enterprises.

Whether purchases or sales have been based on "commercial considerations" shall be determined on the basis of similar arm's-length commercial purchases and sales by any person or entity that is not a state trading enterprise."

State trading enterprise" means—

a. any agency, instrumentality, or administrative unit of a foreign country which purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or sells goods or services in international trade; or

b. any business firm which is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit of a foreign country; is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit; and purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods in international trade.

Conference agreement

The Senate recedes.

j. Denial of benefits (sec. 307 of Senate amendment)

Present law

Any act, policy, or practice of a foreign country that is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement is actionable under section 301.

House bill

No provision.

Senate amendment

The Senate amendment provides that a foreign act, policy, or practice denies benefits to the United States under a trade agreement if it nullifies, impairs, or impedes attainment of the objectives of the trade agreement, or constitutes an unfair trade concessions requirement with respect to any product or service within the purview of the trade agreement."

Unfair trade concessions requirement" is defined as any act, policy, or practice of a foreign government which, as a practical matter, unreasonably requires that substantial direct investment in the country be made, intellectual property be licensed to the foreign country or any firm of the country, or other collateral concession be made as a condition for importation of any U.S. product or service or as a con dition for carrying on business in the foreign country. Existence of such a requirement may be inferred from existing circumstances if direct evidence of a requirement is not otherwise available.

Conference agreement

The Senate recedes.

k. Foreign instrumentalities and territories (sec. 121 of House bill; sec. 307 of Senate amendment; sec. 1301 of conference agreement)

Present law

Present law applies to the acts, policies, or practices of "a foreign country or instrumentality."

House bill

The House bill applies only to a "foreign country" and defines the term "foreign country" to include any foreign instrumentality.

Senate amendment

The Senate amendment applies only to a foreign "country"; any foreign instrumentality, or any possession or territory of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

Conference agreement

The Senate recedes with an amendment to treat any possession or territory of a foreign country that is administered separately for customs purposes as a separate foreign country.

l. Conclusion of certain pending cases (sec. 128 of House bill)

Present law

No provision.

House bill

The House bill expresses the sense of the Congress that the USTR should conclude, as soon as possible, all pending cases involving unfair foreign agricultural export practices.

Senate amendment

No provision.

Conference agreement

The House recedes.

Identification of Trade Liberalization Priorities (sec. 126 of House bill; secs. 303, 304 of Senate amendment; sec. 1302 of conference agreement)

Present law

There is no provision under present law requiring the identification, mandatory investigation, or action on all the major priority trade barriers of a particular country.

House bill

Determination of excessive trade surplus countries. The U.S. International Trade Commission (ITC) must make an annual determination in each of the years 1986 through 1991 as to whether any "major exporting country" (countries with more than $7 billion in trade with the U.S. in 1985 adjusted annually thereafter) is an "excessive trade surplus" country (i.e., it has a ratio of bilateral nonpetroleum exports over nonpetroleum imports that exceeds 175 percent; a bilateral nonpetroleum trade surplus with the United States in excess of $3 billion for the year; and a current account surplus for the year). No ITC determinations are required if the U.S. merchandise trade deficit is less than 1.5 percent of GNP.

The determination is to be made initially by November 15, 1987, and by April 1 of each successive year.

Determination of trade distorting policies. Within 15 days after the ITC determination, the USTR must determine whether any "excessive trade surplus" country is also an "unwarranted surplus" country—i.e., maintains a pattern of unjustifiable, unreasonable or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive trade surplus of that country, based upon section 181 annual report (National Trade Estimate), findings under section 301 or antidumping and countervailing duty laws, adverse GATT determinations, and other relevant information, including but not limited to, the existence of discriminatory government procurement, excessive discriminatory government regulation, governmental tolerance of dumping in foreign markets, export subsidy and targeting policies, excessive tariff barriers, and any other unfair trade barrier.

Designation of a country as an excessive and unwarranted trade surplus country will terminate for any given year if either the ITC or USTR makes a negative determination.

Negotiations and agreements to achieve elimination or reduction of unwarranted practices. The USTR is required to enter into negotiations with each excessive and unwarranted surplus country for the purpose of entering into a bilateral trading arrangement which:

—eliminates such country's "unwarranted" acts, policies, and practices or

—eliminates the significant adverse effects of such acts, policies or practices on U.S. commerce.

Within 90 days after negotiations have begun, the USTR must estimate the commercial value of each country's "unwarranted" practices and submit a report to Congress. Before making such estimates, the USTR must provide opportunity for public comment (including a hearing, if requested); take into account the NTE; and consult with the House Ways and Means and Senate Finance Committees.

In determining whether an arrangement is satisfactory, the USTR must be satisfied that the arrangement will allow U.S. firms to improve their trade with the country involved by an amount equal to the commercial value of the country's unwarranted practices.

Action by USTR if no satisfactory agreement is reached. If, after 6 months the USTR is unable to conclude a satisfactory arrangement, then USTR shall on a timely basis and subject to the specific direction, if any, of the President, take action against all unjustifiable, unreasonable or discriminatory policies or practices found to exist (either during its initial determination of "unwarranted surplus countries" or during negotiations). Any action must be designed to affect the goods and services of the foreign country in an amount equivalent to the burden or restriction caused by these policies or practices. The USTR may take any of the following actions:

1. Suspend, withdraw, or prevent the application of trade agreement concession benefits with that country.

2. Direct customs officers to assess duties or impose other import restrictions on the products of that country for such time, in such an amount, and to such a degree as the President determines appropriate.

3. Take administrative action, and, if necessary, propose legislation.

Surplus reduction requirements. Each excessive and unwarranted surplus country

must reduce its bilateral trade surplus by 10 percent per year. If that goal is not met, the USTR must take action to assure that the goal is met.

Waiver authority. The President would be permitted to modify or terminate any action taken or reduce or waive the surplus reduction goal if the President considers that—

—because of balance of payments difficulties (including debt repayments), the country cannot meet the surplus reduction goal without suffering significant economic harm; or

—continuation of enforcement actions or implementation of the surplus reduction requirement would cause substantial harm to the national economic interest of the United States;

and the President develops a plan of action for otherwise achieving the fundamental purposes of this section.

In order for any modification, termination, reduction, or waiver to become effective, the President must submit to the Congress a document stating his intention and containing the plan of action for otherwise achieving the fundamental purposes of this section.

The Congress would have 60 days to disapprove the waiver under the fast-track.

Annual reports and monitoring. The Secretary of the Treasury and the ITC shall undertake such annual monitoring and analysis of U.S. exports to, and imports from, excessive and unwarranted trade surplus countries with regard to which a trade arrangement or an action is in force as may be necessary to evaluate the efficacy of the actions. The results shall be submitted to the President, the USTR, and the House Ways and Means and Senate Finance Committees.

Further authorized action against currency manipulation. The Secretary of the Treasury would be required to determine whether any "excessive and unwarranted surplus country" is maintaining its currency at an artificially low level in a manner that does not reflect the country's underlying competitive strength in world markets. If he finds affirmatively, the Secretary must initiate negotiations with such country to seek a more realistic alignment of its currency. If the country refuses to negotiate, or to negotiate in good faith, he is authorized to impose an "exchange rate equalization tariff."

Senate amendment

Short title. World Markets Opening Initiative.

Determination of trade distorting policies. Within 29 days after submission to Congress of the National Trade Estimate (NTE) report in 1988 and 1989, the USTR must:

1. Identify, on the basis of the NTE, those foreign countries that maintain a consistent pattern of import barriers and market distorting practices. In making this identification, USTR must take into account the acts, policies, or practices included in the NTE and the level of U.S. exports of goods and services that could reasonably be expected if a country fully implemented its trade agreements, based on the international competitive position of such products and services;

2. Identify each country's major barriers and trade distorting practices whose elimination is likely to have the most significant potential to increase U.S. exports. In determining which barriers are "major," USTR must consider:

a. The international competitive position and export potential of U.S. 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 U.S. exporters; and

3. Estimate the amount by which U.S. exports would have increased during the preceding calendar year if those barriers and practices did not exist.

Report to Congress. A report to Congress by USTR is required on the identification of countries and barriers and on trade estimates described in items b. and c. above.

Initiation of investigations. Within 21 days of filing the report with Congress, USTR must initiate a section 301 investigation with respect to the major trade barriers and market distorting practices identified in the report with regard to each "consistent pattern" country.

Negotiations and agreements to achieve elimination or reduction of unwarranted practices. During the consultations with a foreign country, the USTR must seek to negotiate an agreement which provides for:

1. The elimination of, or compensation for, the major barriers and market distorting practices identified by the USTR, within 3 years of the date on which the investigation was initiated; and

2. The reduction of those barriers and practices over a 3-year period, with the expectation that U.S. exports to that country will, as a result, increase incrementally during each of the 3 years.

Suspension of investigations. An investigation must be suspended if an agreement is reached within the time limits prescribed generally for section 301 investigations.

Action if agreements not complied with. If the President determines that a foreign country is not in compliance with an agreement entered into under this section, the President must direct the USTR to continue the section 301 investigation which was suspended as a result of the agreement, applying the same time limits for investigation that were applicable prior to suspension. General provisions of section 304 and 301 of the Trade Act of 1974, as amended, relating to USTR determinations and Presidential action, apply.

Action by USTR if no satisfactory agreement is reached. All provisions of sections 304 and 301 of the Trade Act of 1974, as amended, relating to USTR recommendations and Presidential action, apply.

Waiver authority. The President is not required to take action when any of the exceptions to action under section 301 generally apply.

Annual reports and monitoring. The USTR must submit a report to Congress annually, beginning in 1989, which includes the following information:

1. Revised estimates of the amount by which U.S. exports to a country would have increased in the absence of its identified major barriers and market distorting practices;

2. In the case of a country that has entered into an agreement, evidence that demonstrates (in the form of increased U.S. exports during the previous year) that substantial progress has been made toward the goal of eliminating the major barriers and market distorting practices;

3. In the case of a country that has not entered into or not complied with an agreement, evidence that demonstrates (in the form of increased U.S. exports) the elimination of the major barriers and market distorting practices;

4. To the extent that evidence under 2. and 3. above cannot be provided, a description of the actions taken by the President under section 301 to eliminate or offset the barriers and market distorting practices.

The USTR may exclude any previously identified foreign country from the report in any calendar year after 1993 if, for the two previous years, the report demonstrated that all of that country's major barriers and market distorting practices have been eliminated.

Petitions by Congressional committees. If the Senate Finance or House Ways and Means Committee determines, through adoption of a resolution, that an investigation should be initiated with respect to the barriers and market distorting practices of any country that the Committee determines maintains a consistent pattern of import barriers or market distorting practices, the Committee is eligible to file a section 301 petition and shall file such a petition.

Further authorized action against currency manipulation. Included under Trade Agreement Negotiating Authority.

Conference agreement

The House recedes, with amendments (1) to base the reports, investigations, and negotiations on identification by the USTR of U.S. trade liberalization priorities, including priority foreign countries and priority practices; (2) to delete the provision for petitions by Congressional committees; (3) to require the identification of priority practices and countries within 30 days after submission of the NTE report in 1989 and 1990; (4) to require the USTR to initiate section 301 investigations of all acts identified under this provision as priority practices for each priority country, and to authorize initiation of investigations for other priority practices; and (5) to conform to the transfer of authority of section 301 action from the President to the USTR.

The change in language to priority practices and priority countries is not intended as a limitation on the scope of the original provision, and is not intended to result in the identification of only token practices and countries. The identification of priority practices is also not limited to those barriers in the NTE report. The USTR is expected to use all information readily available about foreign trade practices.

The annual report to be submitted by the USTR under this provision allows exclusion of any previously identified priority country from the report in any calendar year after 1993 if for the previous two years the report demonstrated that all of that country's priority practices have been eliminated. The conferees recognize that under the literal terms of the provision, the reporting requirement might never terminate because some practices identified are not eliminated. This could occur because the USTR has decided not to take retaliatory action under section 301 (a) or (b), the foreign country has provided satisfactory compensation to the United States, or the foreign country has elected to accept U.S. retaliation rather than to eliminate the practice. However, after 1993, there will not be any remaining priority practices that have not been eliminated or at least been subject to a decision by the USTR; under section 301 and, therefore, the requirement to issue a separate report under this provision will no longer be necessary. Any priority practices that remain in effect at that time should be reflected in the NTE report.

Action to Improve International Intellectual Property Protection

a. Findings, purposes, and sense of Congress (sec. 171 of House bill; sec. 416 of Senate amendment; sec. 1303 of conference agreement)

Present law

No provision.

House bill

The House bill establishes general findings and purposes on the importance of intellectual property rights protection and the need to improve such protection domestically and internationally.

Senate amendment

Under the Senate amendment, a free-standing provision (section 416) makes general findings about inadequate or ineffective protection of intellectual property, unfair methods of competition, and trade barriers; and expresses the sense of the Congress that the President should secure fair market access and protect the intellectual property of U.S. exporters.

Conference agreement

The conferees agreed to merge the House and Senate provisions.

b. Identification of priority foreign countries (sec. 173(a) of House bill; sec. 302(a) of Senate amendment; sec. 1303 of conference agreement)

Present law

No provision.

House bill

Under the House bill, the USTR shall, within 30 days after issuing the annual section 181 report, identify "priority foreign countries" that deny adequate and effective protection of intellectual property rights. The USTR may at any time revoke the identification of priority foreign countries or add countries not previously identified if subsequent information indicates there is a change in circumstances.

For purposes of identifying priority foreign countries, the USTR shall select only those countries—

(1) that have the most egregious acts, policies, or practices that deny adequate and effective protection of intellectual property rights;

(2) whose acts, policies, or practices of denying adequate and effective protection have the greatest adverse impact in their own or other potential markets for the relevant U.S. products; and

(3) are not entering into good faith negotiations or are not making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property rights.

The USTR shall base its identification of foreign priority countries on information in the annual section 181 report; petitions filed under section 301; or other information available or submitted by interested parties to the USTR. The USTR also must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate U.S. Government officials in making such identifications.

Senate amendment

The Senate amendment is the same as the House bill, except the Senate amendment also applies to countries that deny fair and equitable market access to U.S. persons that rely upon intellectual property protection.

With respect to revocation of an identification, the Senate amendment requires the USTR to submit to the Congress a written report setting forth the reasons.

For purposes of identifying priority foreign countries under the Senate amendment, the USTR shall take into account—

(1) the onerous nature and significance of foreign acts, policies, and practices;

(2) the potential foreign market size; and

(3) the estimated trade-distorting impact on U.S. commerce of the foreign acts, policies, and practices.

Finally, the consultation provision is similar to the House bill, except the USTR is not required to consult with the Register of Copyrights and other U.S. Government officials.

Conference agreement

The House recedes, with amendments incorporating the revocation report into the semiannual report under section 301; and merging, with amendments, the House and Senate factors for identifying priority countries.

The Senate recedes on the consultation requirement.

The purpose of the provisions dealing with market access is to assist in achieving fair and equitable market opportunities for U.S. persons that rely on intellectual property protection. As a complement to U.S. objectives on intellectual property rights protection in the Uruguay Round of trade negotiations, the conferees intend that the President should ensure, where possible, that U.S. intellectual property rights are respected and market access provided in international trade with all our trading partners. The provision shall apply to all foreign countries, unless specifically exempted by the terms of this Act, including any nation with which the United States has entered into a bilateral free trade agreement that has not entered into force upon the date of enactment of this Act.

Examples of foreign barriers to market access for products protected by intellectual property rights which this provision is intended to cover include, but are not limited to—laws, acts, or regulations which require approval of, and/or private sector actions taken with the approval of, a government for the distribution of such products; the establishment of licensing procedures which restrict the free movement of such products; or the denial of an opportunity to open a business office in a foreign country to engage in activities related to the distribution, licensing, or movement of such products. The provision also applies to nontariff barriers such as expropriatory policies of a foreign government which disestablish U.S. investments related to products protected by intellectual property rights through their forced resale to private parties in the foreign country.

The Congress is particularly concerned about those trading partners who erect barriers to trade in products protected by intellectual property rights on the grounds of protecting "cultural sovereignty." Such restrictive practices often have a direct and significant adverse financial impact on U.S. industries. Furthermore, such practices may be imitated by other trading partners around the world on the same pretext, thus having the potential to damage seriously important sectors of the U.S. economy.

In determining appropriate actions in response to the denial of market access for U.S. products protected by intellectual property rights due to a foreign act, policy, or practice, the President should endeavor to fashion a response in such a manner as to discourage the erection of similar nontariff barriers in other countries. The President shall consult closely with the affected industry to ensure that the equivalent commercial effect of such barriers is fully assessed.

c. Definitions (sec. 302(a) of Senate amendment; sec. 1303 of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

Under the Senate amendment, the term "persons that rely upon intellectual property protection" means individuals, corporations, partnerships, joint ventures, or other business organizations involved in: the creation, production or licensing of literary or artistic works that are copyrighted, or the manufacture of products that are patented or for which there are process patents.

The term "adequate and effective protection of intellectual property" means that a country provides adequate and effective means under its law for foreign persons to secure, to exercise and to enforce rights in all forms of intellectual property, including patents, process patents, trademarks, copyrights, mask works, trade secrets, and proprietary technical data.

Conference agreement

The House recedes, with amendments to the Senate definitions and with the addition of a definition for denial of fair and equitable market access.

d. Section 301 investigations (sec. 173(b) of House bill; sec. 305(a) of Senate amendment; sec. 1301(b) of conference agreement)

1. Self-initiation

Present law

Section 302(b) authorizes the USTR to self-initiate section 301 investigations after consulting with appropriate private sector advisory committees.

House bill

Under the House bill, the USTR shall promptly self-initiate section 301 investigations on each priority foreign country, unless he determines that initiation with respect to a particular country would be detrimental to the U.S. national economic interest.

If the USTR determines not to self-initiate, he must report promptly in writing to the Congress detailed reasons for the determination, including the U.S. national economic interests which would be affected adversely by self-initiation of an investigation.

Senate amendment

The Senate amendment is the same as the House bill, except self-initiation must take place within 30 days of identification of priority countries; and self-initiation also may be waived if the foreign country has entered into good faith negotiations and substantial and timely progress is being made. In addition, the report also must specify, if appropriate, the progress being made in negotiations.

Conference agreement

The Senate recedes, with an amendment providing for self-initiation of investigations within 30 days.

2. Consultations

House bill

The House bill provides that prior to and during section 301 investigations, the USTR shall consult with the Copyright Office, the Office of Patents and Trademarks, and other appropriate agencies. (Other proce-

dures for section 301 investigations also apply.)

Senate amendment

Identical provision.

Conference agreement

The conferees agree to both the House and Senate provisions.

3. Time limits (sec. 173(c) of House bill; sec. 306(a) of Senate amendment; sec. 1301 of conference agreement)

Present law

Section 304(a) requires the USTR to make a recommendation to the President within 12 months after initiating an investigation.

House bill

The House bill requires the USTR to make a determination and decision under section 304 on what action, if any, he should take under section 301 with respect to each priority foreign country within 6 months after the date of initiation.

The USTR may extend the time period for making the determination and recommendation to the President by up to 6 months on any priority foreign country if—

(1) complex or complicated issues are involved that require additional time;

(2) the country is making substantial progress in drafting or implementing legislative or administrative measures to provide adequate and effective protection of intellectual property rights; or

(3) the country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights.

Senate amendment

The Senate amendment requires the USTR to make a determination under section 304 within 6 months after the date of initiation. Authority to make a decision as to what action, if any, should be taken remains with the President.

The time period for the USTR determination may be extended for the same reasons as in the House bill, but only for an additional 3 months in specified circumstances.

The USTR recommendation to the President on the action, if any, to be taken, is to be made at least 30 days before the President is required to take action.

Conference agreement

The House recedes on time limits. The Senate recedes on the transfer of authority.

e. Section 301 action (sec. 121 of House bill; sec. 306(a) of Senate amendment; sec. 1301 of conference agreement)

Present law

Section 301(e) defines as an "unreasonable" act, policy, or practice the denial of adequate and effective protection of intellectual property rights. The President, if he determines that action by the United States is appropriate, shall take all appropriate and feasible action within his power to obtain the elimination of the act, policy, or practice.

House bill

As in other section 301 cases, the House bill requires the USTR, subject to the specific direction, if any, of the President, to implement section 301 action within 30 days of a decision to take action. (See separate description under section 301 of additional procedural and remedial provisions applicable to all section 301 cases.)

Senate amendment

The Senate amendment requires the President to act within 30 days after an affirmative determination, or 4 months after an affirmative determination in exceptional circumstances investigations. (See separate description under section 301 of additional procedural and remedial provisions applicable to all section 301 cases.)

Conference agreement

The House recedes on time limits. The Senate recedes on the transfer of authority.

Amendments to the National Trade Estimate (Foreign Trade Barriers) Report (sec. 183 of House bill; sec. 301 of Senate amendment; sec. 1304 of conference agreement)

a. Additional estimates

Present law

The report must include an estimate of the trade-distorting impact of the barriers and distortions on U.S. commerce. Certain factors are to be taken into account in making the analysis and estimate required in the annual NTE report, including—

a. the relative impact of the act, policy, or practice on U.S. 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 the act, policy, or practice is subject to international agreements to which the United States is a party; and

d. any advice given through appropriate private sector advisory committees.

House bill

No provision.

Senate amendment

The Senate amendment requires the USTR, in the NTE report, to include an estimate, and to take into account in making an analysis and estimate of significant barriers and their trade impact, of the value of additional goods and services of the United States and the value of additional foreign direct investment by U.S. persons, that would have been exported to, or invested in, each foreign country during the calendar year for which the estimate is made if each of the acts, policies, or practices of such foreign country that is identified as a significant barrier to, or distortion of, trade did not exist.

Conference agreement

The House recedes, with an amendment to require estimates "where feasible."

b. Submission of report

Present law

The NTE report is submitted to the House Ways and Means and Senate Finance Committees annually on the day that is the anniversary of the date of enactment of the International Trade and Investment Act (October 30, 1984).

House bill

The report is to be submitted to "appropriate committees" of the House and to the Senate Finance Committee.

Senate amendment

The Senate amendment requires the USTR to submit the NTE report on March 31 of each year, beginning in 1988, to the President in addition to the House Ways and Means and Senate Finance Committees.

Conference agreement

The House recedes, with amendments (1) requiring the next NTE report to be submitted on April 30, 1989 (no report on October 30, 1988) and on March 31 in subsequent years; and (2) for the report to be submitted in the House to "appropriate committees." The identification of barriers and analysis of their impact in calendar year 1988 is for the purpose of preparing the report to be submitted on April 30, 1989.

c. Additional practices

Present law

Section 181 of the Trade Act of 1974 requires the USTR annually to submit to the House Ways and Means and Senate Finance Committees a national trade estimate (NTE) report identifying and analyzing foreign acts, policies, or practices which constitute significant barriers to, or distortions of, trade.

House bill

The House bill requires the USTR to identify and analyze in the NTE report any other significant act, policy, or practice that may constitute an element of export targeting, as defined in section 301.

Senate amendment

No provision.

Conference agreement

The House recedes.

Investigation of Barriers in Japan to Certain U.S. Services (sec. 908 of House bill; sec. 310 of Senate amendment; sec. 1305 of conference agreement)

Present law

No provision.

House bill

The House bill requires the USTR, within 90 days after enactment, to initiate an investigation of the acts, policies, and practices of the Government of Japan and of entities owned, financed, or otherwise controlled by the Government of Japan with respect to Japanese barriers to the offering by U.S. persons of architectural, engineering, construction, and consulting services in Japan.

Senate amendment

The Senate amendment is identical in substance to the House bill, except it includes the "performance," as well as the "offering," by U.S. persons of such services.

Conference agreement

The House recedes.

Trade and Economic Relations with Japan (sec. 311 of Senate amendment; sec. 1306 of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment contains various findings and expresses the sense of the Congress that the President should propose a summit between U.S. and Japanese leaders, including Members of Congress and representatives of all Japanese political parties, to address trade and economic issues and establish an agreement laying out objectives for improvements in those areas and targets for meeting these objectives.

Conference agreement

The House recedes, with an amendment updating the findings.

Supercomputer Trade Dispute (sec. 312 of Senate amendment; sec. 1307 of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment contains various findings and expresses the sense of the Congress that the USTR and other U.S. Government officials should place the highest priority on concluding and enforcing agreements with Japan on improved market access for U.S. supercomputers and cessation of any Japanese predatory pricing activities. Those officials also should continue to monitor U.S. firms' efforts to gain access to the Japanese market, recognizing that the Japanese government may continue to manipulate its procurement process to maintain market dominance of Japanese producers.

Conference agreement

The House recedes, with an amendment to update the findings.

PART 2—IMPROVEMENT IN THE ENFORCEMENT OF THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

1. Actionable domestic subsidies (sec. 153 of House bill; sec. 333 of Senate amendment; sec. 1312 of conference agreement)

Present law

Section 771(5)(B) of the Tariff Act of 1930 sets forth a list of actionable domestic subsidies which, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, fall within the definition of subsidy subject to U.S. countervailing duties. This list includes, but is not limited to:

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

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

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

(4) the assumption of any costs or expenses of manufacture, production or distribution.

House bill

(a) The House bill clarifies the application of the countervailing duty law to domestic subsidies by requiring that the Commerce Department base its determination on whether a particular subsidy is in fact bestowed upon a specific industry or group of industries, or instead is bestowed upon industries in general.

(b) The House bill also provides a hierarchy of rates to serve as benchmarks for determining whether goods or services are provided at "preferential rates." The provisions requires that the Commerce Department compare the rate provided to the enterprise or industry to the first of the following rates that can be determined: a freely-available and market-determined rate within the foreign country; an appropriate rate applicable to external transactions; the cost of production plus a reasonable profit.

Senate amendment

(a) The Senate amendment contains a provision similar to that of the House bill, which is effective for investigations and reviews initiated after date of enactment.

(b) No provision.

Conference agreement

The House recedes with an agreement by the conferees to direct the U.S. Trade Representative to ask the U.S. International Trade Commission to conduct a section 332 investigation identifying countries which maintain investment barriers or other restrictions which effectively prevent foreign capital from claiming the benefit of foreign government programs on the same terms as domestic capital. The report should be submitted to the House Ways and Means Committee, the Senate Finance Committee, and the USTR. Based upon the ITC report, the USTR should self-initiate section 301 investigations to address those practices it considers to be the most egregious unreasonable practices within the meaning of section 301 and to have the most adverse impact on U.S. industries.

2. Calculation of subsidies on certain processed agricultural products (sec. 338 of Senate amendment; sec. 1313 of conference agreement)

Present law

In cases involving processed agricultural products, the Commerce Department treats subsidies to growers or producers of the raw agricultural input as being bestowed on the processed product, under certain circumstances.

House bill

No provision.

Senate amendment

The Senate amendment codifies and clarifies Commerce practice by adding a new provision to the Tariff Act of 1930 relating to certain subsidies on processed agricultural products. The provision requires subsidies provided on a raw agricultural product to be deemed as provided on the production or export of an agricultural product processed from such raw product if:

(1) the demand for the raw product is substantially dependent on the demand for the processed product; and

(2) the processing operation adds only limited value to the raw product.

Conference agreement

The House recedes.

3. Revocation of status as a Country under the Agreement (sec. 334 of Senate amendment; sec. 1314 of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment clarifies that the U.S. Trade Representative has authority to revoke the injury test for any country that violates a Subsidies Code commitment it has undertaken with respect to the United States. The provision explicitly states that the U.S. Trade Representative may revoke the injury test if a foreign country either announces that it will not, or in fact does not, honor its obligations.

Conference agreement

The House recedes.

4. Treatment of international consortia (sec. 337 of Senate amendment; sec. 1315 of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides that, in determining any countervailing duty, the administering authority shall cumulate, in addition to subsidies provided directly to an international consortium, all subsidies to members (or other participating entities) of an international consortium producing merchandise subject to a countervailing duty investigation that assist, permit, or otherwise enable them to participate in such consortium through production operations in their respective home countries.

Conference agreement

The House recedes. This provision would clarify existing law with regard to the application of the countervailing duty law to cases involving an international consortium. Current law does not expressly address the authority of the Commerce Department to investigate subsidies by more than one foreign government to participants in an international consortium, when the product of the international consortium is subject to a countervailing duty investigation.

This amendment would explicitly authorize the Commerce Department to investigate subsidies provided at each stage of the production process by all participating countries in an international consortium, and to cumulate the amounts of subsidies from all such countries in determining the relevant countervailing duty to be applied to the product subject to investigation.

The conferees intend that the Commerce Department administer the provision by collapsing its subsidy analysis so that the consortium members would be treated as one company for purposes of determining the level of multi-country subsidization attributable to the final product manufactured and exported by the consortium and its members.

The conferees are concerned that U.S. manufacturers are increasingly confronting unfair competition from international consortia receiving subsidies from multiple foreign governments. It is the intent of the conferees that the countervailing duty law be explicitly applicable to cases in which foreign governments provide subsidized assistance for participation in international production and marketing ventures both within and beyond traditional customs union frameworks.

The conferees are aware of the fact that bilateral discussions are currently underway between the United States and the European Community on the issue of subsidies provided to Airbus Industrie. In light of the slow progress of these negotiations, however, it is the intent of the conferees to make it perfectly clear that the U.S. countervailing duty law may be applied to remedy subsidies provided by multiple governments to an international consortium which exports its product to the United States.

5. Dumping by Nonmarket Economy Imports (sec. 325 of Senate amendment; sec. 1316 of conference agreement)

a. Standard for determining dumping

Present law

If available information indicates that the economy of the exporting country is state-controlled to an extent that sales in that country's home market or to third country markets do not permit a determination of foreign market value using the normal methodology, then the administering authority must determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either:

(1) the prices at which merchandise of a non-state-controlled-economy country is sold either for consumption in the home market of that country, or to other countries, including the U.S.; or,

(2) the constructed value of merchandise in a non-state-controlled-economy country.

House bill

No provision.

Senate amendment

The Senate amendment provides that the foreign market value of imports from nonmarket economy countries shall be based on the trade-weighted average price at which comparable merchandise, produced in the "eligible market economy country" accounting for the largest volume of imports of comparable merchandise, is sold at arm's length in the U.S. during the most recent period for which sufficient information is available.

Conference agreement

The House recedes with a substitute amendment to determine foreign market value using a constructed value methodology based on the factors of production utilized in producing the merchandise subject to investigation. The relevant factors of production would include, but not be limited to, labor, raw materials, energy and other utilities, and representative capital costs, including depreciation. The factors would be valued from the best available evidence in a market economy country (or countries) that is at a comparable level of economic development as the country subject to investigation and is a significant producer of the comparable merchandise. The term "significant producer" includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant net exporting country in valuing factors.

In valuing such factors, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. However, the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intend that Commerce base its decision on information generally available to it at that time. In addition, Commerce should seek to use, if possible, data based on production of the same general class or kind of merchandise using similar levels of technology and at similar levels of volume as the producers subject to investigation.

b. Nonmarket economy country

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment defines the term "nonmarket economy country" as any foreign country that Commerce determines does not operate on market principles of cost or pricing structures, so that sales in the country do not reflect the fair value of the goods. In making this determination, Commerce shall take into account: currency convertibility; the extent to which wage rates are determined by free bargaining between labor and management; the extent to which joint ventures and foreign investment are permitted; and other factors Commerce considers appropriate.

Commerce may make such a determination at any time. It shall remain in effect until revoked and not be subject to judicial review.

Conference agreement

The House recedes with an amendment to add as additional factors to be considered, (a) the extent of government ownership or control over means of production, and (b) the extent of government control over allocation of resources, price and output decisions of enterprises, and international transactions.

c. Eligible market economy country

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment defines the term "eligible market economy country," as any country that is not a nonmarket economy country, where comparable goods are produced and exported, and which Commerce determines is appropriate, taking into account factors including, but not limited to:

(1) whether comparable goods from that country are subject to an antidumping or countervailing duty order (or agreement suspending any such investigation);

(2) whether any international agreement affecting the price or quantity of imports is in effect; or,

(3) whether the level of imports is *de minimis.*

Conference agreement

The Senate recedes.

d. Exceptions

Present law

No provision.

House bill

No provision.

Senate amendment

If Commerce determines that there is no eligible market economy country, foreign market value would be based on constructed value of comparable merchandise in any country or countries other than a nonmarket economy country.

If Commerce determines that the comparable merchandise from the eligible market economy country is either subject to an antidumping order, or Commerce has reason to believe it is being sold below fair value, then the foreign market value for the imports under investigation shall be a constructed value based on the factors of production incurred in producing the imports (including, but not limited to, labor, raw materials, energy and other utilities, and representative capital costs, including depreciation). The factors would be valued from the best available evidence in the market economy or economies deemed appropriate by Commerce. Commerce shall determine whether there is reason to believe that such comparable merchandise is being sold at less than fair value whenever the petitioner or another interested party alleged such.

Conference agreement

The House recedes with a substitute amendment providing that, if the administering authority determines that there is not adequate information on which to value the factors of production, then Commerce shall determine foreign market value based on the prices at which comparable merchandise from a market economy country (or countries) at a comparable level of economic development is sold for export to other countries, including the United States. In applying this provision, Commerce should not use export prices that are distorted by unusual conditions or terms (for example, tied aid sales). Commerce shall, to the extent possible, ensure that the comparable merchandise be of the same quality as the merchandise subject to the investigation, or shall make appropriate adjustments to compensate for quality differences (if any), as practicable.

e. Suspension agreements

Present law

Section 734 allows for suspension of an antidumping investigation based on:

(1) an agreement to cease exports within 6 months;

(2) an agreement to revise prices to eliminate completely any sales at less than fair value; or,

(3) an agreement to revise prices to eliminate completely the injurious effects of the imports.

It does not allow for suspension of antidumping investigations on the basis of quantitative restriction agreements.

House bill

No provision.

Senate amendment

The Senate amendment provides a special rule under section 734 for suspending antidumping investigations of imports from nonmarket economy countries based on quantitative restraint agreements. Such agreements must satisfy the general requirements for suspension agreements, including public interest criteria, and prevent suppression or undercutting of domestic price levels.

Conference agreement

The House recedes.

f. Collection of information

Present law

No provision.

House bill

No provision.

Senate amendment

The U.S. Customs Service and the ITC would be required, upon request by Commerce, to provide Commerce with all public or proprietary information obtained by them that is relevant to investigations regarding imports from nonmarket economy countries.

Conference agreement

The House recedes, with an amendment to delete the requirement with respect to the ITC.

6. Third-country dumping and input dumping (sec. 156 of House bill; secs. 1317 and 1318 of conference agreement)

Present law

No provision.

House bill

The House bill adds a new section to the Tariff Act of 1930 to account for diversionary input dumping (exportation of a product which incorporates a dumped input product) in determining the foreign market value of a product under investigation.

Diversionary input dumping occurs whenever any foreign material or component which has been found within the past six years to have been dumped in the U.S. market is purchased by a foreign manufacturer at a price less than its fair value.

Commerce shall investigate whether input dumping is occurring whenever:

(1) Commerce has reasonable grounds to believe or suspect that diversionary dumping is occurring;

(2) the input is routinely used as a major material or component in producing the merchandise currently under investigation (such that it has a significant effect on the cost of producing the merchandise); and,

(3) imports of the input have declined, or increased more slowly, while imports of the

merchandise under investigation have increased.

If the Commerce Department determines that diversionary input dumping is occurring, then the foreign market value for the merchandise under investigation (the downstream product) must be based on constructed value, which shall be increased by the difference between the dumped input's purchase price and its fair value.

In determining whether, and to what extent, the foreign input was purchased by a foreign manufacturer at a price "less than its fair value", Commerce shall use the following:

(1) If there is an antidumping duty order currently in effect with respect to the input, then the foreign market value of the input identified in such order shall be used in determining the fair value of the input.

(2) If there is no antidumping duty order currently in effect, because the investigation was terminated or suspended on the basis of a quantitative restriction agreement, then the fair value of the input shall be based on the best available information, including any information gathered in the previous investigation of the input and information contained in the petition.

(3) If Commerce determines that the method for calculating fair value of the input under (1) or (2) does not accurately reflect the benefit bestowed to the manufacturer of the merchandise under investigation, it may make adjustments to reflect a more accurate measurement of the actual benefit bestowed.

If Commerce investigates diversionary input dumping, it may extend deadline for preliminary determination by 30 days. If Commerce commences investigating diversionary input dumping after its preliminary determination, it may extend the deadline for its final determination by 30 days.

Senate amendment

No provision.

Conference agreement

The Senate recedes with a substitute amendment which provides (1) new procedures for domestic industries who are injured by third-country dumping to request antidumping action by foreign governments, and (2) authority for the Commerce Department, when foreign market value is based on constructed value, to base the value of a major input which has been provided by a related party on its costs of production, rather than the price authorized under section 773(e)(2), when certain conditions exist.

Section 1317 of the conference agreement sets forth procedures for domestic industries to petition the U.S. Trade Representative to pursue U.S. rights under Article 12 of the GATT Antidumping Code. A domestic industry that produces a product like or directly competitive with merchandise produced by a foreign country may submit a petition to the U.S. Trade Representative if it has reason to believe that such merchandise is being dumped in a third country market and such dumping is injuring the U.S. industry.

If the U.S. Trade Representative determines there is a reasonable basis for the allegations in the petition, the U.S. Trade Representative shall submit to the appropriate authority of the foreign government an application requesting that antidumping action be taken on behalf of the United States. Article 12 of the GATT Antidumping Code requires that such an application "be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned." (paragraph 2, article 12). Accordingly, at the request of the U.S. Trade Representative, the appropriate officers of the Commerce Department and the ITC shall assist the U.S. Trade Representative in preparing any such application.

After submitting an application to the foreign government, the U.S. Trade Representative shall seek consultations with its representatives regarding the requested action. If the foreign government refuses to take any antidumping action, the U.S. Trade Representative shall consult with the domestic industry on whether action under any other U.S. law is appropriate.

Section 1318 of the conference agreement adds a new paragraph (3) to section 773(e) of the Tariff Act of 1930 to address situations in which "constructed value" is being used as a basis for foreign market value, and the foreign manufacturer has purchased a major input from a related party. The amendment provides that if the Commerce Department has reasonable grounds to believe or suspect that the amount representing the value of a major input which is provided by a related party ("transfer price") is less than the related party's costs of producing such major input, then Commerce may base the value of such input on the best evidence available as to its costs of productin when such costs are greater than the price that would be used as a result of the application of paragraph (2) ("arms-length price").

The conferees expect that, if petitioner makes a bona fide allegation that the transfer price for the major input or the arms-length price is less than the related party's costs of production, then Commerce will investigate such claims and may request cost-of-production information from the related party seller of the input. If the related party seller does not provide reliable data on its costs of production, and Commerce has reasonable grounds to believe or suspect that the transfer price and also the arms-length price would be less than costs of production, then Commerce should use best information to establish a reasonable estimate of the related party's costs of production for such input. The term "costs of production" means all fully allocated costs, including overhead, but not including profit.

In relying on best evidence available, Commerce may use information developed during the course of a previous antidumping investigation of the particular material or component with regard to its "foreign market value". If Commerce uses information from a previous investigation, however, it must consider whether the information is still reliable, taking into account the period of time on which the information is based.

It is not the intent of the conferees that foreign market value be based on constructed value solely for the purpose of using this provision to increase dumping margins. The conferees expect that constructed value shall be used as the basis for foreign market value only when a price comparison using home market prices or third-country sales prices is inappropriate. Inappropriate situations could include the situation in which a component that accounts for a significant proportion of the value of the merchandise subject to investigation is purchased by a related party at a dumped price.

7. Fictitious markets (sec. 336 of Senate amendment; sec. 1319 of conference agreement)

Present law

In investigating whether dumping is occurring, Commerce shall not take into account in determining the foreign market value of the imported goods any sale or offer for sale that is intended to establish a fictitious market.

House bill

No provision.

Senate amendment

The Senate amendment provides that Commerce may consider as evidence of the establishment of a fictitious market the occurrence of different home market price movements for different forms of a product subject to an antidumping duty order if the movements appear to reduce the dumping margin.

Conference agreement

The House recedes.

8. Downstream product monitoring (sec. 164 of House bill; sec. 323(a) of Senate amendment; sec. 1320 of conference agreement)

a. In general

Present law

No provision.

House bill

The House bill establishes new procedures for the monitoring of imports of downstream products in order to identify potential diversionary practices resulting from significant antidumping or countervailing duties on component parts. The provision applies to imports of downstream products which contain a major part, component, assembly, subassembly, or material which has been subject to a dumping finding or subsidy finding of 15 percent or more in the past 5 years.

Senate amendment

The Senate amendment contains a provision similar to the House provision, subject to certain additional conditions.

Conference agreement

The House recedes.

b. Petitions

Present law

No provision.

House bill

Domestic producers of component parts of downstream products may petition the Commerce Department to designate a downstream product for monitoring. Such petition must identify the downstream product to be monitored, the relevant component part, and the reasons for suspecting the likely diversion of foreign exports of the component part into increased exports of the downstream product.

Senate amendment

The Senate amendment contains a similar provision to that in the House bill.

Conference agreement

The House recedes.

c. Designation by Commerce

Present law

No provision.

House bill

Within 14 days of the petition, the Commerce Department must determine whether there is a reasonable likelihood that imports of the downstream product will increase as an indirect result of any diversion with respect to component parts. Commerce may, if

appropriate, take into account such factors as:

(1) the value of the component part in relation to the value of the downstream product;

(2) the extent to which substantial transformation has taken place; and,

(3) the relationship between the producers of the component parts and the downstream products.

Commerce determinations shall not be subject to judicial review.

Senate amendment

The Senate amendment contains a similar provision, but adds the requirement that one of the following conditions apply:

(1) the component part is already being monitored under a bilateral agreement to limit steel imports;

(2) there have been a significant number of investigations or orders issued against products related to, and from the same foreign country as, the component part; or

(3) there have been two or more investigations or orders issued against products similar in description and use to the component part that were manufactured or exported by the manufacturer or exporter of the component part.

Conference agreement

The House recedes. In considering the value of the component part in relation to the value of the downstream product, the conferees intend that Commerce consider whether such part or component represents a significant portion of the costs of producing the downstream product.

d. Monitoring by ITC

Present law

No provision.

House bill

Upon designation by Commerce of a downstream product, the ITC shall immediately commence monitoring the volume of trade in such downstream product, and publish quarterly reports thereon. If the ITC finds that imports increased by 5 percent or more during any quarter, then the ITC must analyze such increase in the context of overall economic conditions in that product sector.

Senate amendment

The Senate amendment contains a similar provision, but requires monitoring of trade, rather than volume of trade.

Conference agreement

The House recedes.

e. Subsequent action by Commerce

Present law

No provision.

House bill

Commerce must consider the ITC monitoring reports in determining whether to initiate an antidumping or countervailing duty investigation with respect to a downstream product.

Commerce is authorized to request the ITC to stop monitoring a downstream product if the ITC reports indicate that imports are not increasing and Commerce determines that there is no longer a reasonable likelihood of diversion.

Senate amendment

The Senate amendment contains the same provisions as in the House bill.

Conference agreement

The House recedes.

10. Prevention of circumvention of antidumping and countervailing duty orders (sec. 155 of House bill; sec. 323(b) of Senate amendment; sec. 1321 of conference agreement)

a. Assembly or finishing operations in the United States

Present law

No specific provision. Under certain circumstances, Commerce will include within the scope of an antidumping or countervailing duty order or finding imported parts and components that are assembled in the United States if the assembled product is of the same class or kind of merchandise as that covered by the order.

House bill

The House bill addresses two types of circumvention of antidumping findings or orders and countervailing duty orders ("orders"):

(1) the importation of parts or components to be assembled in the U.S. into the class or kind of merchandise covered by the order; and

(2) the importation of an incomplete or unfinished article to be completed in the U.S. (by means other than assembly) into the class or kind of merchandise covered by the order.

In both situations the order which covers the completed article from a particular country or countries shall apply to the imported parts or components, provided that:"

(a) substantially all of the parts or components are imported from the country subject to the finding;

(b) the value added in the U.S. is small; and,

(c) the parts or components were produced by a company related to the company performing the U.S. operations.

The Senate amendment contains a provision similar to the House bill, except the authority is discretionary (e.g., Commerce may apply the order to the imported parts or components but is not required to do so), and provisos (a) and (c) in the House bill are dropped. In determining whether to apply the order to the imported parts or components, Commerce shall take into account the pattern of trade, whether the foreign and U.S. companies are related, and whether imports of the parts or components increased after issuance of the order on the final product.

Conference agreement

The House recedes.

b. Assembly or finishing operations in a third country

Present law

No specific provision. Under certain circumstances, Commerce considers merchandise completed or assembled in a third country to be subject to an antidumping or countervailing duty order or finding.

House bill

The House bill permits Commerce to prevent evasion of an order by shipment of merchandise to the U.S. through a third country, when certain conditions are met. When Commerce finds such action appropriate to prevent significant evasion of an antidumping or countervailing duty order, Commerce may include in such order imports of merchandise of the same class or kind subject to the order that was completed or assembled in a third country, provided that:

(1) substantially all of the parts or components are imported from the country subject to the order;

(2) the value added in the U.S. is small; and

(3) the parts or components were produced by a company related to the company performing the U.S. operations.

Senate amendment

The Senate amendment contains a provision similar to the House bill, except that the provision applies when Commerce finds such action appropriate to prevent evasion, rather than significant evasion; provisos (1) and (3) in the House bill are dropped; and it is made explicit that the provision applies both in cases where the order is on the merchandise shipped to the third country for completion or assembly (diversion) and where the order is on a final product, parts and components of which are sent from the country subject to the order to the third country for assembly or completion (circumvention). In determining whether to apply the order to the imported merchandise from the third country, Commerce shall take into acccount whether the foreign manufacturers are related, the pattern of trade, and whether imports of the merchandise from the third country increased after issuance of the order.

Conference agreement

The House recedes.

c. Minor alterations

Present law

No specific provision. Under current practice, Commerce includes within the scope of an antidumping or countervailing duty order or finding merchandise which has been altered in minor respects from the merchandise originally investigated.

House bill

The House bill addresses the practice whereby a foreign producer alters the merchandise in minor respects in form or appearance to circumvent an outstanding order. An order on an article presumptively includes articles altered in minor respects in form or appearance (including raw agricultural products that have undergone minor processing), whether or not they remain in the same tariff classification, unless Commerce determines it unnecessary to do so.

Senate amendment

The Senate amendment contains a similar provision, except that it does not include the reference to agricultural products.

Conference agreement

The House recedes with an amendment to include the parenthetical reference to agricultural products.

d. Later developed products

Present law

No specific provision.

House bill

No provision.

Senate amendment

The Senate amendment addresses the application of outstanding antidumping and countervailing duty orders to merchandise that is essentially the same as merchandise subject to an order but was developed after the original investigation was initiated.

The provision requires Commerce, in determining whether the later-developed product is within the scope of the existing order, to consider whether the original and later-developed products are the same or similar with respect to general physical characteristics, the expectations of the ultimate purchasers, their ultimate use, channels of trade, and advertisement and dis-

play. The provision prohibits Commerce from excluding a later-developed product from the order merely because it is classified under a different item of the tariff schedules or adds functions, unless the additional functions constitute the primary use of the product and are more than a significant proportion of the production cost.

Conference agreement

The House recedes. This provision is intended to clarify and codify current Commerce Department authority, which has been recognized by the courts. It is not intended, nor are any of the provisions in this section intended, to call into question past authority of the Commerce Department to make scope decisions.

e. ITC advice

Present law

No provision.

House bill

The House bill authorizes the Commerce Department to take action to prevent circumvention of antidumping and countervailing duty orders, as described above in items (a) through (d).

Senate bill

The Senate amendment also authorizes the Commerce Department to take action to prevent circumvention of antidumping and countervailing duty orders, as described above in items (a) through (d).

Conference agreement

The conferees agreed to amend the authority to take anti-circumvention action to establish procedures under which the ITC would be provided an opportunity to consult with the Commerce Department regarding relevant injury issues. The provision requires the Commerce Department to notify the ITC before making a scope determination,

(a) under subsection (a) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),

(b) under subsection (b) with respect to merchandise completed or assembled in other foreign countries, or

(c) under subsection (d) with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product.

This notification requirement applies only if the antidumping or countervailing duty order or finding was based on an affirmative injury determination by the ITC (and thus would not apply, for example, to imports from countries which do not get the benefit of an injury test). The decision by the Commerce Department as to whether the proposed inclusion of certain merchandise in the scope of an order or finding fits in one of the three categories which requires notification shall not be subject to judicial review.

After receiving notice of a proposed inclusion, the ITC may consult with the Commerce Department regarding the proposed inclusion. Any such consultation shall be completed within 15 days. If the ITC believes, after consulting with the Commerce Department, that the proposed inclusion presents a significant injury issue, the ITC may provide written advice as to whether the inclusion would be inconsistent with the affirmative injury determination on which the order or finding was based. If the ITC decides to provide such advice, it shall promptly notify the Commerce Department of its intention to do so, and must provide the written advice within 60 days of the date on which Commerce notified it of the proposed inclusion.

Before making any determination regarding a proposed inclusion with respect to which the ITC has indicated its intention to provide written advice, the Commerce Department shall take into account such written advice.

The purpose of this provision authorizing ITC injury advice is to ensure that any anti-circumvention action taken is consistent with U.S. international obligations. The conferees believe that it is appropriate for the Commerce Department to consult with the ITC regarding later-developed products primarily when it believes that inclusion of the merchandise may be inconsistent with U.S. international obligations.

It is the expectation of the conferees that findings by the ITC that the inclusion of the merchandise is inconsistent with the prior injury determination would be relatively unusual, since the anti-circumvention provisions are intended to address efforts to import the same class or kind of merchandise in slightly modified form and should typically fall within the ITC's prior finding of injury.

In particular, the application of the U.S. finishing or assembly provision will not require new injury findings as to each part or component. The anti-circumvention provision is intended to cover efforts to circumvent an order by importing disassembled or unfinished merchandise for assembly in the United States. Hence, the ITC would generally advise as to whether the parts and components "taken as a whole" fall within the injury determination. If more than one part or component is proposed for inclusion, the ITC would not make separate findings as to each part or component but instead would determine whether the imported parts and components can be constructively assembled so as to constitute a like product for purposes of the original order. With respect to finishing in the United States, the ITC would advise whether the ITC examined the semi-finished product in the prior investigation or regards the semi-finished product as a like product.

The ITC would advise as to whether the inclusion of the parts or components, taken as a whole, would be inconsistent with its findings in the prior injury determination. The conferees expect a relatively narrow set of issues to arise: (1) whether the assembly being undertaken would qualify the assembler or finisher as a part of the U.S. industry under the prior industry definition; (2) whether the parts, components, or semi-finished products were treated as a distinct like product by the ITC in the prior injury determination and were therefore expressly or implicitly excluded from the order; and (3) whether the parts, components, or semi-finished products constitute a distinct like product, with distinct characteristics and uses, and therefore were not encompassed by the prior injury determination. While other issues could arise, the conferees expect that the bulk of the ITC's advisory functions will deal with these issues.

The third country assembly situation will typically involve the same class or kind of merchandise, where Commerce has found that the de facto country of origin of merchandise completed or assembled in a third country is the country subject to the antidumping or countervailing duty order. Hence, the focus of ITC advice should be whether the imported class or kind of merchandise is a like product within the meaning of the prior injury determination, or whether imports from the third country were specifically excluded (and if so, whether circumstances have changed since then, by virtue of circumvention).

With respect to later-developed products, a significant injury issue can arise if there is a significant technological development or a significant alteration of the merchandise involving commercially significant changes in the characteristics and uses of the product. In providing such advice, the ITC should not focus narrowly on the product's features at the time the order was issued, but should analyze its general characteristics and uses in light of its prior determination. Thus, a later-developed product incorporating a new technology that provides additional capability, speed, or functions would be covered by the order as long as it has the same basic characteristics and uses.

The conferees expect that written advice would be unnecessary in the vast majority of scope rulings. For this reason, the provision does not apply to situations involving minor completion or minor assembly, or minor alterations. In addition, the conferees expect that in many cases, the relevant consultations can be handled informally, through a telephone call, or a meeting if more formal discussions are necessary. The ITC should only provide formal written advice when it determines that a significant injury issue is presented. Since most issues can be dealt with through consultations, resort to formal written advice will be the exception, not the rule. If ITC provides written advice on which Commerce bases a scope determination, the ITC would be responsible for defending such advice in any relevant judicial proceeding.

11. Steel imports (sec. 195 of House bill; sec. 323(b) of Senate amendment; sec. 1322 of conference agreement)

Present law

Under the Steel Import Stabilization Act (title VIII of the Trade and Tariff Act of 1984), the President is authorized to enforce quantitative restrictions on steel imports, as provided in bilateral arrangements with steel-exporting countries.

House bill

(1) The House bill provides explicit authority to enforce quantitative restrictions on steel imports when the steel product is exported from an arrangement country and transshipped or transformed in a nonarrangement country before entering the U.S. Any steel product that is manufactured in a country that is not party to a bilateral arrangement (a "nonarrangement country") from steel which is melted and poured in a country that is party to a bilateral arrangement (an "arrangement country") may be treated for purposes of the quantitative restrictions under that arrangement as if it were a product of the arrangement country. The Secretary of Commerce, after consultation with USTR, may direct the Secretary of the Treasury to implement procedures to carry out this provision.

(2) No provision.

Senate amendment

(1) The Senate amendment contains a similar provision except that the President, rather than the Secretary of Commerce, may direct the Secretary of the Treasury to implement procedures.

(2) The Senate amendment also authorizes USTR, consistent with the "third country equity provision" of a bilateral arrangement on steel imports, to take such actions

as deemed necessary with respect to steel imports from other countries to ensure the effectiveness of any portion of such arrangement.

Conference agreement

(1) The House recedes with an amendment striking the reference to the Secretary of Treasury. It is the expectation of the conferees that the President will delegate authority under this provision consistent with the existing delegation of authorities and responsibilities for implementation of the steel VRA program. The conferees intend that this provision apply to products from foreign countries as well as to products from U.S. insular possessions or any territory outside the customs territory of the United States. The conferees also intend that imports from the insular possessions shall be treated in no worse a manner than imports from foreign countries under this provision.

(2) The House recedes.

12. Short life cycle products (sec. 165 of House bill; sec. 324 of Senate amendment; sec. 1323 of conference agreement)

a. Establishment of product category

Present law

No provision.

House bill

The House bill provides procedures for monitoring and investigating dumping by foreign companies that have repeatedly been found to be dumping. An eligible domestic entity may petition the Secretary of Commerce requesting that a product category be established.

The petition shall include such information as the Secretary of Commerce considers necessary or appropriate, including, but not limited to, the following: a general category of products (based on the products of the foreign manufacturers subject to the antidumping action); each product (by TSUS number or other classification) within the general category that the petitioner seeks to have included in or excluded from the monitoring category and the reasons for inclusion or exclusion; and, any product outside the general category that the petitioner wishes included in the monitoring category.

Upon receiving a petition, Commerce shall verify the antidumping action on which it is based and determine if the petitioner is an eligible domestic entity. After doing so, Commerce shall submit the petition to the ITC.

Within 90 days, the ITC shall establish a product category, after publishing notice, providing an opportunity for presentation of views (including a hearing if requested by any interested person), and taking into account information received. Such product category shall consist of similar articles that are manufactured or produced by similar processes and that have similar uses.

Upon petition by an interested party, or by its own motion, the ITC may, after providing an opportunity for comment by other interested parties, modify a product category to the extent considered necessary or appropriate.

Senate amendment

The Senate amendment contains a similar provision, except that it requires the ITC, rather than Commerce, to determine whether the petitioner is an eligible domestic entity. The petition requesting establishment of a product category is required to identify the product subject to the affirmative dumping determination, and specify (including TSUS number) the merchandise that petitioner seeks to have included in, and excluded from, the product category that includes the product subject to such antidumping determination, providing reasons for such inclusion or exclusion.

The Senate amendment also requires the ITC to ensure, in determining the scope of the product category, that such category consists of similar merchandise produced by similar processes under similar circumstances and with similar uses.

The Senate amendment does not include a reference to modifications of categories upon petition by interested parties. The ITC may modify the scope of a category at any time on its own initative, after publishing a notice of the proposed modification and providing interested parties an opportunity to submit comments and be heard.

Conference agreement

The conferees agreed to a substitute provision, similar to the Senate amendment, which is limited to short life cycle merchandise. Short life cycle merchandise is defined as "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 provision, the term "outmoded" refers to a kind or style no longer state-of-the-art.

The conferees are concerned about the application of the antidumping law with respect to a number of industries, particularly the high-technology sectors, in which product life cycles are relatively short. A product can be displaced as a result of technological advances by a new generation of product with superior cost or performance characteristics very quickly. With the introduction of a new product, sales growth of the earlier product will slow, and demand will begin to decline, although some residual sales of the earlier product may continue to be made for many years. For example, in the case of semiconductors, a life cycle for a particular kind of semiconductor is often 2 to 3 years.

For purposes of this provision, a product's life cycle should not be determined by reference to the entire time period over which a product may be sold, but should be considered to end at the point at which the emergence on the market of a new product with superior cost or performance characteristics begins to affect adversely the sales of the earlier product.

b. Monitoring of imports

Present law

No provision.

House bill

The House bill establishes three types of dumping offenders (first offenders, second offenders, and multiple offenders) according to the number of dumping findings made with respect to the same manufacturer or producer within a given product category.

After a product category is established, any eligible domestic entity may request Commerce to monitor imports of any product within such category that is produced by a first offender. Commerce shall monitor such imports if it determines that there is a reasonable likelihood that dumping may occur.

Commerce is required to monitor all imports within a given product category that are produced by a second offender. With respect to multiple offenders, Commerce is required to monitor all imports produced by the multiple offender within such category, as well as imports that are in any related product category.

Senate amendment

The Senate amendment contains a provision similar to the House provision, expect that the number of dumping offenses required to qualify for monitoring is increased by one. Upon the request of an eligible domestic entity, Commerce shall monitor imports of any product that is produced by a second offender within a given product category, if Commerce determines that there is a reasonable likelihood that dumping may be occurring.

With respect to a multiple offender, Commerce must monitor all imports that are produced by such multiple offender within a product category. Any monitoring of imports under this section shall continue for 3 years following the initiation of such monitoring.

Conference agreement

The conferees agreed to strike the House and Senate provisions.

c. Expedited dumping investigations

Present law

No provision.

House bill

If monitoring of a first offender results in information indicating a reasonable likelihood that a monitored product is being dumped, then Commerce must initiate an antidumping investigation on imports of such product unless a substantial proportion of U.S. manufacturers of the like or directly competitive product request that it not be initiated.

If monitoring of a second offender results in information indicating a reasonable likelihood that any of the monitored products are being dumped, then Commerce must initiate antidumping investigations on imports of such products.

If monitoring of a multiple offender results in evidence that any of the monitored products are being dumped, then Commerce must initiate antidumping investigations on imports of such products.

All investigations initiated under this section shall be expedited to the maximum extent possible. Critical circumstances will be presumed. The ITC will take into account the effect on the domestic industry of previous dumping by the first, second, or multiple offender.

Senate amendment

If the monitoring of any offender provides a reasonable likelihood that the monitored product or products are being dumped, then Commmerce must initiate an antidumping investigation on such imports unless the industry requests that no investigation be initiated.

No extension of the normal time deadlines in an investigation may apply unless all U.S. manufacturers of the like product submit written notice to Commerce of their consent to such extensions.

Conference agreement

The House recedes with a substitute amendment requiring Commerce to conduct expedited antidumping investigations when a significant percentage of the imports under investigation are manufactured or produced by a multiple offender. In cases involving an alleged third offense in the same product category, if the manufacturers that are second offenders account for a significant proportion of the imports under investigation, Commerce shall make its preliminary antidumping determination within 120 days of the filing of the petition. In cases involving an offender that has committed

three or more offenses, Commerce shall make its preliminary antidumping determination within 100 days of the filing of the petition.

No extension of the preliminary antidumping determination will be permitted for "extraordinarily complicated cases", except that extension may occur if there is consent of the domestic industry. In the course of these expedited antidumping investigations, Commerce shall automatically make an affirmative finding with respect to the requirements under section 733(e)(1)(A) relating to critical circumstances.

Industries producing short life cycle merchandise are particularly vulnerable, by virtue of the short life cycle of their products, to severe damage as a result of repeated dumping. For this reason, the conferees agreed to provide shorter time deadlines than normally provided for antidumping investigations involving multiple dumping offenders, in order to expedite the relief that would be provided to such injured industries.

d. Definitions

(i) Antidumping offense

Present law

No provision.

House bill

Any foreign manufacturer or producer is a "first offender" under this section if a final dumping margin on a product within a product monitoring category is determined for such manufacturer or producer under any published antidumping duty order or a suspension agreement. A foreign manufacturer or producer is a "second offender" if two such margins are determined for such foreign manufacturer or producer within 10 years. A foreign manufacturer or producer is a "multiple offender" if three or more such margins are determined for such foreign manufacturer or producer within 10 years.

Senate amendment

The Senate amendment is similar to the House bill, except that only dumping margins in excess of 10 percent are counted as "offenses," there is no time limit for counting offenses as in House bill (e.g., 10 years), and a suspension agreement following a preliminary determination of a dumping margin of 10 percent or more is counted as an offense, rather than a suspension agreement where a final dumping margin is determined.

The Senate amendment clarifies that only those companies that are specifically identified by name in the antidumping determination and specifically assigned a dumping margin shall be considered offenders.

Conference agreement

The House recedes with an amendment that only dumping margins in excess of 15 percent within an 8-year period are counted as "offenses." For purposes of assessing and confirming affirmative determinations under the new section 739 (as added by this Act), the conferees intend that Commerce and the ITC focus on the manufacturer or producer, and not on the country in which the product was produced.

(ii) Eligible domestic entity

Present law

No provision.

House bill

An "eligible domestic entity" is a U.S. manufacturer or producer, or certified or recognized union or group of workers which is representative of a U.S. industry, that produces a product like or directly competitive with merchandise subject to an antidumping order or similar enough to such merchandise to be considered for inclusion in the same product monitoring category.

Senate amendment

The Senate amendment contains a similar provision, except that it includes those manufacturers or workers that produce a product that is subject to a suspension agreement as well as an antidumping order.

Conference agreement

The House recedes.

e. Treatment of prior offenses

Present law

No provision.

House bill

Any foreign manufacturer found to be a first offender under this section in the 10 years immediately following enactment of this Act shall be treated as a second offender if a final dumping margin on a product within the same product category had been determined for such manufacturer in an antidumping action between January 1, 1980, and the date of enactment.

Senate amendment

The Senate amendment has a similar provision, except only offenses under antidumping orders since December 31, 1980 and offenses under suspension agreements since December 31, 1984 shall be taken into account. Such offenses shall be considered to have occurred on the date of the latest determination.

Conference agreement

The House recedes with technical amendments.

13. Critical circumstances (sec. 321 of Senate amendment; sec. 1324 of conference agreement)

Present law

If the petitioner alleges critical circumstances at any time more than 20 days before a final antidumping or countervailing duty determination, Commerce shall promptly determine, based on the best information available, whether there is a reasonable basis to believe that:

(1)(a) in a countervailing duty case, the alleged subsidy is inconsistent with the GATT Subsidies Code; or,

(b) in an antidumping case, there is a history of dumping of the merchandise, or the importer knew (or should have known) that the imports were being dumped; and,

(2) there have been massive imports of the product under investigation over a short period of time.

Antidumping or countervailing duties will be applied retroactively to unliquidated imports entered after the date 90 days prior to the preliminary antidumping or countervailing duty determination, if Commerce finds critical circumstances in its final determination and the ITC finds in its final affirmative injury determination that:

(1) in a countervailing duty investigation there is material injury that will be difficult to repair, and the material injury was by reason of the massive imports of the subsidized merchandise over a relatively short period; or,

(2) in an antidumping investigation, the material injury is by reason of such massive imports to an extent that in order to prevent such injury from recurring, it is necessary to impose antidumping duties retroactively.

House bill

No provision.

Senate amendment

The Senate amendment authorizes Commerce, if it has a reasonable basis to suspect that critical circumstances may exist, to request that the Customs Service compile statistics on an expedited basis on the volume and value of the imports subject to investigation and forward such information to Commerce as directed, but at least every 30 days.

The Senate amendment also clarifies that Commerce has the authority to make a preliminary determination of critical circumstances at any time after initiation of an investigation.

The Senate amendment further amends the standard by which ITC determines whether critical circumstances exist. If Commerce finds critical circumstances, ITC would determine whether retroactive imposition of antidumping or countervailing duties appears necessary to prevent recurrence of material injury that was caused by massive imports over a relatively short period of time and, in countervailing duty cases, that will be difficult to repair. In making this determination, the ITC shall consider whether:

(1) massive imports over a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping or countervailing duties;

(2) foreign economic conditions led to massive imports;

(3) such foreign economic conditions are likely to persist; and

(4) the impact of the massive imports is likely to continue after issuance of an antidumping or countervailing duty order.

These amendments are effective for investigations initiated after date of enactment.

Conference agreement

The House recedes with clarifying amendments. The conferees believe that an improved critical circumstances procedure will significantly strengthen antidumping and countervailing duty procedures by revitalizing a provision that has up to now been ineffective. To this end, the conferees have adopted and refined the revision contained in the Senate amendment.

The key addition is a clarification of the standards to be used by the ITC in assessing whether the imposition of retroactive duties is necessary to prevent recurrence of injury. The GATT Codes are unclear on this point, which has created serious conceptual difficulties for the ITC. After reviewing the relevant GATT provisions, the conferees believe that the ITC should focus on whether the effectiveness of the antidumping or countervailing duty order or finding would be materially impaired by the failure to impose duties retroactively on the massive imports.

In making this determination, the ITC should examine the injury suffered by the U.S. industry as a result of dumped or subsidized imports. Obviously, the weaker the condition of the U.S. industry, the greater the need to levy a retroactive duty to prevent unfairly priced sales of imports, for example, of imports that remain in inventories, since such sales would represent an additional blow to an already-injured industry. In addition, the ITC would review the likelihood that the import surge occurred as a result of efforts to circumvent the order. There is a need to deter such efforts, particularly when they exacerbate the injury to the industry.

Finally, the ITC shall consider whether foreign economic conditions led to massive dumping. For example, conditions of per-

sistent, structural oversupply in the exporter's home market may lead to the massive dumping. The conferees believe that efforts by exporters to unload massive excess supply on the U.S. market in a period of depressed international prices are in effect a means of transferring economic hardship and may well call for retroactive duties if they materially increase the extent of injury suffered by the U.S. industry.

The conferees recognize that such determinations may be difficult and are not susceptible to precise mathematical calculations.

14. Expedited review authority (sec. 331 of Senate amendment; sec. 1325 of conference agreement)

Present law

In certain circumstances, Commerce is authorized to review an antidumping duty order within 90 days of its issuance, rather than waiting until an annual review. If Commerce is satisfied that, based on information presented to it, it will be able to determine, within 90 days after issuing an order, the final antidumping duties owed on imports that entered prior to an affirmative final determination by the ITC, it may allow an importer to continue posting bond, rather than depositing the estimated antidumping duties, during those 90 days. The results of the expedited review then serve as the basis of the estimated antidumping duties that must be deposited until the next review, if requested.

House bill

No provision.

Senate amendment

The Senate amendment limits the circumstances in which Commerce may institute expedited reviews to cases in which:

(1) the original investigation was not designated as extraordinarily complicated;

(2) the final antidumping duty determination was not postponed because of a request by the exporters;

(3) the foreign manufacturer or exporter provides credible evidence that the dumping margin will decline as a result of the review; and

(4) the review would be based on representative sales that are sufficient for purposes of comparison.

The Senate amendment also requires Commerce to make confidential information supplied to it for the review available under administrative protective order to interested parties and allow them an opportunity to file written comments.

These amendments are effective for investigations and reviews initated after date of enactment.

Conference agreement

The House recedes.

15. Processed agricultural products (sec. 152 of House bill; sec. 326 of Senate amendment; sec. 1326 of conference agreement)

a. Definition of domestic industry

Present law

Section 771(4) defines "industry" as 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. The term "like product" in turn means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation.

House bill

In antidumping and countervailing duty investigations involving a processed agricultural product, the ITC may include producers or growers of the raw agricultural product as part of the domestic industry producing the processed product if two conditions exist:

(1) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and,

(2) there is a substantial coincidence of economic interest between the producers of the raw agricultural product and the producers of the processed agricultural product based upon relevant economic factors, which may include price, added market value, or other economic interrelationships (regardless of whether they are based on any legal relationship).

Senate amendment

The Senate amendment contains the same provision as the House bill, effective for investigations and reviews initiated after date of enactment.

Conference agreement

The conferees agreed to retain the provision, with a sunset clause stating that the provision shall cease to have effect if the U.S. Trade Representative notifies the administering authority and the Commission that the application of the provision is inconsistent with the international obligations of the United States. Before any such notification, the U.S. Trade Representative shall consult with the Committee on Ways and Means and the Committee on Finance.

The conferees are confident that the provisions in this amendment are in full conformity with the international obligations of the United States under GATT, the Antidumping Code, and the Subsidies Code. The conferees are aware, however, that there have been several GATT challenges to the application of the "like product" provisions. Accordingly, in order to ensure that the United States adheres completely to its GATT obligations, the conferees have agreed to a provision authorizing the U.S. Trade Representative to advise Commerce and the ITC if the provisions in this amendment should ever be found inconsistent with GATT and such ruling should be accepted by the United States.

Any determination by the U.S. Trade Representative that application of the provision is inconsistent with U.S. international obligations must be based on a final ruling, accepted by the United States, by either the GATT or an international tribunal authorized by the United States to determine issues on U.S. international obligations.

The conferees note that the United States has a policy of not adopting Subsidies Code panel reports, if another signatory is blocking adoption of an adverse ruling (e.g., the EC pasta dispute). The conferees expect this policy to continue, as the GATT dispute settlement process should not be a one-way street. It is the expectation of the conferees that the issues raised in the recent GATT panels reports shall be resolved in the Uruguay Round Subsidies negotiations, rather than through unilateral termination of this amendment.

b. Threat of material injury

Present law

Section 771(7)(F) lists specific factors which the ITC must consider in determining threat of material injury, including the potential for product-shifting.

House bill

The House bill adds as an additional factor to be considered in investigations involving both raw and processed agricultural products, the likelihood of increased imports by reason of product-shifting (due to an order being imposed on one product but not the other).

Senate amendment

The Senate amendment contains the same provision as the House bill.

Conference agreement

The conferees agreed to retain the provision.

c. Standing

Present law

The following interested parties have standing to file an antidumping or countervailing duty petition on behalf of an industry:

(1) a manufacturer, producer, or wholesaler in the U.S. of a like product;

(2) 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 U.S. of a like product;

(3) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the U.S.; and

(4) an association, a majority of whose members is composed of interested parties described above.

House bill

In investigations involving a processed agricultural product, the definition of interested parties who have standing to file a petition is expanded to include a coalition or trade association which is representative of either (a) processors or (b) processors and producers.

Senate amendment

The Senate amendment contains the same provision as the House bill, effective for investigations and reviews initiated after date of enactment.

Conference agreement

The conferees agreed to retain the provision, with a sunset clause stating that the provision shall cease to have effect if the U.S. Trade Representative notifies the administering authority and the Commission that the application of the provision is inconsistent with the international obligations of the United States. Before any such notification, the U.S. Trade Representative shall consult with the Committee on Ways and Means and the Committee on Finance. This sunset clause, and the reasons for its adoption, are the same as those described above relating to the definition of "domestic industry."

16. Leases equivalent to sales (sec. 335 of Senate amendment; sec. 1327 of conference agreement)

Present law

Both the antidumping and countervailing duty laws apply to any leasing arrangement which is equivalent to the sale of that merchandise (see sections 731 and 701 of the Tariff Act of 1930).

House bill

No provision.

Senate amendment

The Senate amendment amends the countervailing duty law to apply to all leasing arrangements. This change would be effective for investigations and reviews initiated after date of enactment.

Conference agreement

The House recedes with a substitute amendment. The conference agreement amends the Tariff Act of 1930 to identify specific factors which must be considered in determining whether a lease is equivalent to a sale for purposes of the antidumping and countervailing duty laws. These factors include:

(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, such as whether the lease transaction would permit avoidance of antidumping or countervailing duties.

This provision has been adopted to provide guidance to the Commerce Department and the ITC in determining whether a lease is equivalent to a sale. It clarifies a 1984 amendment that was designed to prevent importers from evading antidumping and countervailing duties by structuring sales transactions as leases.

The lease issue arises frequently in transactions involving capital goods, such as airplanes, heavy electrical equipment, machine tools, construction equipment, and other "big ticket" items. Because leases can take an infinite variety of forms, the amendment sets out general guidelines for making such determinations. In applying the provision, it is intended that Commerce and the ITC focus on commercial realities and the substance of the transaction, rather than its form.

The scope of the term "sale" should be broad enough to cover a wide variety of transactional arrangements. The most straightforward leasing situations involve long-term leases with a definite term and payment schedule. These transactions closely resemble a sale. The conferees recognize, however, that short-term or walk-away leases may also be leases equivalent to a sale.

A renewable short-term lease or an indefinite walk-away lease for an item, such as a large truck, commercial airplane, or heavy electrical equipment, would be equivalent to a sale where, for example, the product has been integrated into the operations of the company or where there is a likelihood that the lease will be continued or renewed for a significant period of time. This includes walk-away or short-term leases of the type used in international leasing of commercial aircraft by companies such Airbus Industrie. On the other hand, a short-term lease for a rental car for vacation or business trip or other consumer products generally should not be deemed equivalent to a sale.

17. Material Injury

(Sec. 154 of House bill; sec. 329 and 330 of Senate amendment; sec. 1328 of conference agreement)

a. Factors to consider

Present law

In determining whether there is material injury by reason of dumped or subsidized imports, the ITC must consider, among other factors:

(1) the volume of imports;

(2) the effect of imports on prices in the United States for like products; and,

(3) the impact of imports on domestic producers of like products.

House bill

The House bill clarifies that the ITC is required, in every case, to consider and explain its analysis of each of the three specified factors. The ITC may consider, on a case-by-case basis, such other economic factors as are relevant to an injury determination. If any other factor is considered, however, it must be identified and its relevance explained.

Senate amendment

The Senate amendment contains the same provision as the House bill.

Conference agreement

The conferees agreed to retain the provision. In cases in which domestic producers perform minor finishing operations on dumped or subsidized inputs, the ITC may, if appropriate and feasible, take into account that the profits of such producers may reflect incorporation of such inputs.

b. Evaluation of price effects

Present law

In evaluating the effect of imports on prices, the ITC must consider whether there has been significant "price undercutting" by imports.

House bill

The House bill replaces the term "price underdutting" with the term "price underselling" to clarify that this provision does not require evidence of predatory pricing.

Senate amendment

The Senate amendment contains the same provision as the House bill.

Conference agreement

The conferees agreed to retain the provision.

c. Evaluation of impact on domestic industry

Present law

In examining the impact on the domestic producers, the ITC must consider all relevant economic factors which have a bearing on the state of the industry, including but not limited to:

(1) actual and potential decline in output, sales, market share, profits, productivity, return on investment, and utilization of capacity;

(2) factors affecting domestic prices; and

(3) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

House bill

The House bill specifies that the ITC should consider these factors in the context of the business cycle and conditions of competition that are distinctive to the affected industry.

Senate amendment

The Senate amendment contains the same provisions as the House bill, and adds the cfollowing additional factor for the ITC to consider:

"(4) actual and potential negative effects on existing efforts of the domestic industry to develop and produce a type of product derived or developed from an earlier type of product."

Conference agreement

The House recedes with a technical amendment to change the final factor to read "(4) the actual and potential negative effects on existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the like product."

d. Geographically isolated markets

Present law

No provision.

House bill

The House bill amends section 771(7) of the Tariff Act to authorize the ITC to consider whether imports have historically supplied a substantial proportion of demand in a geographically isolated market, and, in appropriate circumstances, to disregard imports into such a geographically isolated market in making its injury determination.

A geographically isolated market is defined as one in which:

(1) producers located within such market have not supplied demand in that market to any substantial degree in the most recent representative period, and there is no reasonable likelihood that they will do so in the future;

(2) producers have made no significant effort as measured by capital investment in plant and equipment, or in distribution and marketing, within a reasonably recent period, to meet demand in that market, and there is no reasonable likelihood that they will do so in the future; and,

(3) producers located outside the area have historically not met demand within the region at prices reasonably equivalent to prices prevailing elsewhere in the United States because of transportation, insurance, or other costs which would be incurred to ship the product to or market the product in the geographically isolated market.

Senate amendment

No provision.

Conference agreement

The House recedes. It is the view of the conferees that current law already authorizes the ITC to consider, in appropriate circumstances, whether imports enter certain geographical markets where the domestic industry does not compete in determining whether dumped or subsidized imports are causing material injury or threat thereof.

18. Threat of material injury (sec. 154 of House bill; sec. 330 of Senate amendment; sec. 1329 of conference agreement)

Present law

In determining whether there is a threat of material injury, the ITC must consider, among other relevant economic factors:

(1) if a subsidy is involved, the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Subsidy Code);

(2) 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;

(3) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level;

(4) 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;

(5) any substantial increase in inventories of the merchandise in the United States;

(6) the presence of underutilized capacity for producing the merchandise in the exporting country;

(7) any other demonstrable adverse trends that indicate the probability that the importation of the merchandise (whether or not

it is actually being imported at the time) will be the cause of actual injury; and

(8) the potential for product-shifting.

House bill

The House bill adds 3 additional factors for ITC to consider:

(9) diversion of foreign products to the U.S. market by reason of restraints on exports of the merchandise to, or on imports of the merchandise into, third country markets;

(10) in an antidumping case, the extent to which the foreign merchandise has been sold at less than fair value in other markets, as evidenced by antidumping orders or findings in other GATT member markets (if the foreign manufacturer, exporter, or U.S. importer does not provide specific and convincing information to establish there is no threat of injury, the ITC may draw adverse inferences);

(11) in investigations involving both raw and processed agricultural products, the likelihood of increased imports by reason of product-shifting (due to an order being imposed on one product but not on the other).

Senate amendment

The Senate amendment contains no counterpart to factor (9) of the House bill. The Senate amendment does contain provisions similar to factors (10) and (11), except for the portion of factor (10) relating to the drawing of adverse inferences.

The Senate amendment also adds an additional factor not in the House bill:

"the actual and potential negative effects on existing efforts of the domestic industry to develop and produce a type of product derived or developed from an earlier type of product."

Conference agreement

The House recedes with a technical amendment to change the last factor to read:

"the actual and potential negative effects on existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the like product."

19. Cumulation (sec. 154 of House bill; sec. 1330 of conference agreement)

a. Material injury

Present law

In determining material injury in any antidumping or contervailing duty investigation, the ITC must cumulatively assess the volume and price efforts of imports from two or more countries subject to investigation if such products compete with each other and with like products of the domestic industry.

House bill

The House bill amends section 771(7) of the Tariff Act to mandate explicity cumulation of subsidized imports with dumped imports. In determining material injury, the ITC must cumulatively assess the volume and price effects of imports from two or more countries if such imports are either (a) currently subject to any antidumping or countervailing duty investigation, or (b) within the past 12 months, subject to any antidumping or countervailing duty investigation which resulted in a final order, suspension agreement, or termination based on a quantitative restraint agreement. The provisions retains the requirement under current law that such imports, to be cumulated, must compete with each other and with like products of the domestic industry.

Senate amendment

No provision.

Conference agreement

The House recedes.

b. Threat of material injury

Present law

No provision.

House bill

The House bill amends section 771(7) of the Tariff Act to require the ITC, in determining threat of material injury, to cumulate, to the extent practicable, the volume and price effects of imports from two or more countries if such imports are currently subject to any antidumping or countervailing duty investigation, and such imports compete with each other and with like products of the domestic industry.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment to make the provision discretionary rather than mandatory.

c. Treatment of negligible imports

Present law

No provision.

The House bill provides a limited exception to mandatory cumulation with respect to negligible imports. It authorizes the ITC to exclude imports from a particular country from its cumulative injury assessment if such imports are negligible and have no discernible adverse impact on the domestic industry. In determining whether imports from a particular country are negligible, ITC shall examine all relevant economic factors, including the following:

(1) whether the volume and market share of such imports are negligible;

(2) whether sales transactions involving such imports are isolated and sporadic; and,

(3) whether the U.S. market for the like product 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.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment. The conferees intend that the ITC apply the exception narrowly and that it not be used to subvert the purpose and general application of the requirement.

The conferees agreed to an amendment that provides a special rule for investigations involving imports from Israel. The amendment authorizes the ITC to treat as negligible and having no discernible adverse impact on the domestic industry imports from a country with which the United States had entered into a free trade area agreement prior to January 1, 1987, i.e., Israel, if the ITC finds that a domestic industry is not materially injured by reason of such imports.

Before applying this provision, in any investigation involving imports from Israel, the ITC would first determine whether a domestic industry is materially injured by reason of the imports from Israel. If the ITC made an affirmative determination, this provision would not apply. If the ITC made a negative determination, it would be authorized to consider such imports as negligible and having no discernible impact on the domestic industry.

In deciding whether such imports are negligible and having no discernible impact on the domestic industry, the ITC should consider all relevant economic factors regarding the imports, including the level of the imports from Israel, relative to both domestic production and other imports under investigation, their effect on U.S. prices for the like product, and their impact on domestic producers.

20. Certification of submissions (sec. 161 of House bill; sec. 328 of Senate amendment; sec. 1331 of conference agreement)

Present law

No provision.

House bill

The House bill requires any person submitting factual information in an antidumping or countervailing duty proceeding to certify that such information is accurate and complete to the best of that person's knowledge.

Senate amendment

The Senate amendment contains the same provision as the House bill, effective for investigations and reviews initiated after date of enactment.

Conference agreement

The conferees agreed to retain the provision, with the effective date provided in the Senate amendment.

21. Access to information (sec. 158 of House bill; sec. 327 of Senate amendment; sec. 1332 of conference agreement)

Present law

Section 777 sets forth procedures for interested parties to submit, and to obtain access to, confidential information involved in an antidumping or countervailing duty proceeding. Current law permits, but does not require, the Commerce Department or the ITC to release confidential information submitted by a party to the investigation.

House bill

The House bill amends section 777:

(1) to permit release by the Commerce Department or by the ITC of all confidential information under an administrative protective order, except privileged or classified information or information of a type deemed not appropriate for release;

(2) to impose reasonable time limits on decisions by the Commerce Department regarding releasability of information;

(3) to require Commerce to return information submitted by a person who refuses to make it available under protective order;

(4) to require service of information to all parties to a proceeding; and

(5) to require submission of information to the Commerce Department on a timely basis within a reasonable deadline, with a reasonable period for comment by other parties.

Senate amendment

The Senate amendment also amends section 777 with respect to proceedings before the ITC:

(1) to require the ITC to make proprietary information submitted by any person in connection with an investigation available under administrative protective order; and

(2) to allow application to the Court of International Trade for an order directing the ITC to make the information available (removes the limitation restricting such application).

Conference agreement

The conferees agreed to a substitute amendment which essentially merges the House and Senate provisions. The substitute

amendment requires both the Commerce Department and the ITC to release, under administrative protective order, to interested parties who are parties to the proceeding, all business proprietary information presented to or obtained by it during an antidumping or countervailing duty proceeding, with a limited exception for (1) privileged information, (2) classified information, and (3) specific information for which there is a clear and compelling need to withhold from disclosure.

Under this standard, the general rule is that business proprietary information shall be subject to disclosure under administrative protective order; the exceptions authorized are intended to be very narrow and limited exceptions. The first two exceptions ("privileged" and "classified" information) are standard exceptions, with a commonly understood meaning. The third exception ("specific information for which there is a clear and compelling need to withhold from disclosure") is expected to be used rarely, in situations in which substantial and irreparable financial or physical harm may result from disclosure.

An example of a specific type of information which may fit this definition is trade secrets, that is, a secret formula or process having a commercial value, not patented, known only to certain individuals who use it in compounding or manufacturing an article of trade.

An expectation on the part of the Commerce Department or the Commission, however, that disclosure of a certain type of information would have a "chilling effect" on its efforts to collect data clearly does not establish a "clear and compelling need to withhold from disclosure."

The parties who may have access to business proprietary information under administrative protective order are limited to authorized representatives of interested parties who are parties to the proceeding. Authorized representatives include outside legal counsel for interested parties, and consultants or other experts if either (a) such individuals are under the control and advice of legal counsel and legal counsel has signed on their behalf or if (b) such individuals regularly appear before Commerce or the ITC (and the agency thus has effective sanctions to be applied against them) or (c) in other instances in which the agency has effective sanctions to be applied against the individuals. In determining whether in-house counsel may properly be given access, Commerce and the ITC should be guided by the factors enumerated in *United States Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984).

The conferees recognize that effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which the private parties have confidence that there are effective sanctions against violations. The ITC is directed to establish procedures and regulations with respect to the application of these amendments, and to report back to the Committee on Ways and Means and the Committee on Finance within one year on the implementation of these provisions, including whether there is a need for further authority to impose sanctions.

The provision requires timely submission of information by the parties, in order to provide other parties a reasonable opportunity to comment on it. The conferees recognize that the ITC often seeks out particular items of information in the final days or hours before its determination; the conferees do not intend for the ITC to be prohibited from continuing to doing so. The requirement for timely submission of information is meant to address the voluntary submissions of information from private parties, and is not meant to restrict the Commission's ability to seek out information which it does not have but views as important to make the best possible determination it can. If the Commission seeks out such information and there remains insufficient time to disclose it and allow for comment on it by parties prior to the Commission's determination, the Commission may nevertheless consider such information but must release it as soon as practicable.

The conferees also recognize the administrative burden that would be imposed if all the day-to-day working papers and notes of agency staff were to be subject to this disclosure requirement, and therefore do not intend that such documents be subject to disclosure. This reflects the understanding of the conferees that the content of such documents will either be reflected in a document that is released (such as the ITC staff report) or they are unlikely to have a bearing or impact on the outcome or the basis for the agency's determination.

It is not the intent of the conferees to alter the current authority of the Commerce Department or the ITC to withhold business proprietary information from release in accordance with the Freedom of Information Act.

22. Correction of Ministerial Errors (sec. 163 of House bill; sec. 1333 of conference agreement)

Present law

No provision.

House bill

The House bill requires Commerce to establish procedures for the correction of ministerial errors (i.e., mathematical or clerical errors or other unintentional errors), within a reasonable time after final determinations, or review of such determinations, and to ensure that interested parties have an opportunity to present their views regarding such errors.

Senate amendment

No provision.

Conference agreement

The Senate recedes. It is the understanding of the conferees that the Commerce Department has recently published draft regulations establishing procedures for correcting errors.

23. Drawback treatment (sec. 159 of House bill; sec. 1334 of conference agreement)

Present law

Duties paid on imported merchandise which is used in the manufacture of goods for export, may be refunded upon the exportation of such goods. To receive benefit of drawback, the completed article must have been exported within five years of the date of importation of the relevant duty-paid merchandise. The amount of refund is equal to 99 percent of the duties attributable to the foreign, duty-paid content of the exported article. Both antidumping and countervailing duties are treated as regular custom duties and thus are eligible for drawback.

House bill

The House bill amends section 779 to prohibit antidumping and countervailing duties paid on imported merchandise from being eligible for refund under drawback provisions.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

24. Governmental importations (sec. 160 of House bill; sec. 332 of Senate amendment; sec. 1335 of conference agreement)

Present law

Under schedule 8 of the Tariff Schedules, U.S. governmental importations are not subject to regular customs duties.

House bill

The House bill amends Title VII to clarify that merchandise imported by, or for the use of, the U.S. Government is not exempt from antidumping and countervailing duties.

Senate amendment

The Senate amendment contains a provision similar to that in the House bill, but provides a limited exemption from the general rule for:

(1) merchandise imported by, or for the use of, the Department of Defense that is subject to any preexisting Department of Defense Memorandum of Understanding; and

(2) governmental importations of merchandise which is normally purchased only by governments (e.g., certain military equipment.)

Conference agreement

The House recedes with an amendment to limit the exemption to merchandise imported by, or for the use of, the Department of Defense (DOD) if—

(1) the merchandise is acquired by, or for the use of, DOD

(a) from a country with which DOD 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

(b) in accordance with the terms of the Memorandum of Understanding in effect at the time of importation, or

(2) the merchandise has no substantial non-military use.

This would include, for example, the DOD Memoranda of Understanding with Israel, Egypt, and Australia.

25. Studies (sec. 169 of House bill; sec. 973 of Senate amendment; sec. 1336 of conference agreement)

a. Study of market reforms in China

Present law

No provision.

House bill

The House bill requires the Secretary of Commerce to study and report to Congress within 12 months on the new market orientation of the People's Republic of China. The study shall address the effect of the new orientation on market policies, price structure and the relationship between domestic Chinese prices and world prices, and the application of U.S. trade laws to China, including any possible need for changes in U.S. antidumping law to deal more appropriately with countries in transition to more market-oriented economies.

Senate amendment

The Senate amendment contains the same provision as the House bill.

Conference agreement

The conferees agreed to retain the provision, with an amendment requiring the Secretary of Commerce to consult with the heads of other relevant executive branch agencies.

b. USTR Study of subsidy commitments

Present law

No provision.

House bill

The House bill requires the U.S. Trade Representative to begin, within 90 days of enactment, a review of Subsidies Code commitments undertaken by other countries with respect to the United States, and to report to the Committee on Ways and Means and the Committee on Finance on the results of such review within six months of its commencement. It requires the review to include an evaluation of whether commitments have been met; the time frames for compliance; and any recommendations on how to improve commitments policy.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

26. Effective dates (sec. 341 of the Senate amendment; sec. 1337 of conference agreement)

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Senate amendment provided for the following effective dates with respect to its amendments to the antidumping and countervailing duty laws:

(a) amendments relating to critical circumstances (section 321) and dumping by nonmarket economy countries (section 325) are effective only for investigations initiated after date of enactment;

(b) amendments relating to anti-circumvention actions (section 323(a)), steel imports (section 323(b)) and governmental importations (section 332) apply to entries, and withdrawals from warehouse for consumption, that are liquidated on or after date of enactment;

(c) amendments relating to fictitious markets (section 336) apply with respect to investigations and reviews initiated after date of enactment, and to any reviews pending on date of enactment for which a request for revocation is also pending;

(d) amendments relating to processed agricultural products (section 326), access to information (section 327), certification of submissions (section 328), material injury (section 329), threat of material injury (section 330), expedited review authority (section 331), determination of subsidies (section 333), and leases (section 335) apply with respect to investigations and reviews initiated after date of enactment; and

(e) all other amendments relating to the antidumping and countervailing duty laws take effect on date of enactment.

Conference agreement

The House recedes with amendments as follows:

(a) amendments relating to international consortia (section 1315), dumping by nonmarket economy countries (section 1316), and input dumping by related parties (section 1318) apply with respect to investigations and reviews initiated after date of enactment;

(b) amendments relating to anti-circumvention action (section 1321) and drawback treatment (section 1334) apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after date of enactment;

(c) amendments relating to fictitious markets (section 1319) apply only with respect to reviews (not investigations); and

(d) amendments relating to cumulation (section 1330) apply with respect to investigations initiated after date of enactment.

PROVISIONS NOT INCLUDED IN THE CONFERENCE AGREEMENT

27. Application of countervailing duty law to nonmarket economy countries (sec. 157 of House bill)

Present law

In 1986, the U.S. Court of Appeals for the Federal Circuit held that the countervailing duty law does not apply to nonmarket economy countries. See *Georgetown Steel Corp. v. U.S.*, 801 F.2d 1308 (Fed. Cir. 1986).

House bill

The House bill would amend the Tariff Act of 1930 to state that the countervailing duty law does apply to a nonmarket economy country to the extent that the administering authority can reasonably identify, and determine the amount of, a subsidy provided by that country.

Senate amendment

No provision.

Conference agreement

The House recedes.

28. Calculation of exporter's sales price (sec. 339 of Senate amendment)

Present law

In antidumping cases where U.S. sales are made through an importer that is related to the foreign manufacturer or exporter of the merchandise under investigation, Commerce determines whether dumping is occurring by comparing the foreign market value of the merchandise under investigation to the exporter's sales price. Exporter's sales price is based on the related importer's resale price to the first unrelated U.S. purchaser, subject to certain adjustments.

In calculating the exporter's sales price, Commerce is required under section 772(e)(2) to deduct selling expenses incurred in the United States by the related importer from the importer's resale price. In making adjustments for circumstances of sale, Commerce makes an offsetting deduction from foreign market value for selling expenses incurred in the home market by the foreign manufacturer or exporter. In practice, Commerce deducts the full amount of direct selling expenses from foreign market value, but limits the deduction for indirect selling expenses to no more than the amount of indirect selling expenses deducted from the exporter's sales price. (See 19 CFR 353.15.)

Present law contains no provision concerning the treatment of profits in calculating exporter's sales price.

House bill

No provision.

Senate amendment

The Senate amendment amends the antidumping law for cases involving exporter's sales price comparisons by (1) prohibiting Commerce from deducting any indirect selling expenses from foreign market value; and (2) requiring Commerce, in calculating exporter's sales price, to deduct profits from selling in the United States.

This provision would apply to imports from countries that are signatories to the GATT Antidumping Code.

Conference agreement

The Senate recedes.

29. Sham transactions (sec. 322 of Senate amendment)

Present law

The importer of record is liable for the payment of antidumping duties.

House bill

No provision.

Senate amendment

The Senate amendment requires Commerce to direct Customs to treat the U.S. end purchaser as the importer of record solely liable for the payment of antidumping duties if Commerce finds that goods are being imported by, or for the account of, a manufacturer, producer, seller or exporter for the purpose of absorbing antidumping duties, *i.e.*, a sham transaction.

Factors to be considered in determining whether a transaction is a sham include whether:"

(1) the manufacturer or exporter has actual notice of an antidumping proceeding;

(2) the transaction is an unusual method of importation for the manufacturer or exporter; and,

(3) the size and nature of the exporter's commercial operations with respect to the merchandise in the U.S. is insignificant.

The Senate amendment also provides that this provision is effective with respect to orders issued as a result of investigations initiated after date of enactment.

Conference agreement

The Senate recedes. It is the view of the conferees that the Commerce Department has authority under current law and proposed regulations on the reimbursement of antidumping duties to address the concerns that gave rise to this Senate amendment.

30. Private remedy for persistent dumping (sec. 166 of House bill)

Present law

Section 801 of the Antidumping Act of 1916 provides for criminal and civil penalties to be imposed against any party who commonly and systematically imports articles at a price substantially less than the actual market value or wholesale price, with the intent of destroying or injuring an industry in the U.S. Civil damages may be recovered in the amount of threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

House bill

The House bill contains three amendments with respect to the private cause of action under the Antidumping Act of 1916:

(a) The criminal sanctions under the 1916 Act are repealed.

(b) The term "actual market value" means the same as "foreign market value" under the antidumping law (title VII of the Tariff Act).

(c) In any civil action for damages brought under the Antidumping Act of 1916 against a "multiple offender", the fact that three or more dumping findings were made against the same foreign manufacturer would establish a rebuttable presumption of "intent to injure a U.S. industry." Damages in such a case, however, would be limited to single (not treble) damages. The presumption of intent would only be available when the plaintiff is a U.S. manufacturer of a like product.

Senate amendment

No provision.

Conference agreement

The House recedes.

31. Compensation fund for injured producers (sec. 167 of House bill)

Present law

Antidumping duties are collected and deposited in the general fund of the Treasury.

In antidumping proceedings, the ITC determines whether a domestic industry is being injured by reason of dumped imports. The ITC makes no determination with respect to injury to individual producers.

House bill

A separate account, to be funded by antidumping duties, is established with respect to each antidumping order issued, to provide compensation to domestic producers who have been injured by reason of dumped imports. The Secretary of the Treasury shall be responsible for distributing the proceeds in each separate account to certified injured parties, in accordance with appropriation acts.

ITC shall determine in response to applications from domestic producers whether a particular domestic producer has been injured and by what amount. ITC shall then issue a compensation award stating the amount of money payable to such producer from the appropriate account.

Senate amendment

No provision.

Conference agreement

The House recedes.

32. Explanation of Commerce rulings (sec. 162 of House bill)

Present law

No provision.

House bill

The House bill requires Commerce to include in its notices of final antidumping and countervailing duty determinations, or reviews of such determinations, an explanation of any significant deviation in the determination from established administrative precedent.

Senate amendment

No provision.

Conference agreement

The House recedes. It is the view of the conferees that the public notices of determinations by the Commerce Department and the ITC should provide a full explanation for the rationale of such determinations.

33. Application of countervailing duty and antidumping laws to imports of technical books (sec. 340 of Senate amendment)

Present law

No provision in the antidumping and countervailing duty laws. The Florence Agreement, as implemented in U.S. law by the Educational, Scientific and Cultural Material Importation Act of 1966, grants duty-free treatment to technical books as well as other printed material.

House bill

No provision.

Senate amendment

The Senate amendment provides that technical publications that receive duty-free treatment pursuant to the Florence Agreement and that are primarily commercial rather than educational in nature are not exempt from the provisions of the antidumping and countervailing duty laws.

Conference agreement

The Senate recedes.

34. Injury test for certain duty-free merchandise (sec. 168 of House bill)

Present law

Commerce may impose countervailing duties on duty-free merchandise that is not the product of a country designated under section 701(b) of the Tariff Act of 1930 only if there is an affirmative ITC material injury determination, unless such a determination is not required by U.S. international obligations, i.e., the product is not from a country that has definitively acceded to the GATT.

Present law provides no specific provision on the authority and procedure for the ITC to perform an investigation in cases where the requirement of an injury test arises after a countervailing duty order has been issued or while a countervailing duty case is pending.

House bill

The House bill provides that, whenever Commerce notifies the ITC that an outstanding countervailing duty order or pending investigation applies to duty-free merchandise without an injury test and U.S. international obligations, as determined by the U.S. Trade Representative, require an injury determination, the ITC shall make an injury determination within 180 days. If the ITC finds material injury, the order would remain in effect; if the injury determination is negative, the countervailing duty order would be revoked.

Senate amendment

No provision.

Conference agreement

The House recedes.

PART 3—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Findings and purpose (sec. 171 of House bill; sec. 1341 of conference agreement)

Present law

No provision.

House bill

The House bill establishes general findings and a purpose on the importance of intellectual property rights protection and the need to improve such protection.

Senate amendment

No provision.

Conference agreement

The conferees agreed to the House provision.

2. Injury (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

Section 337 of the Tariff Act of 1930 provides for relief against unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale. In order to obtain relief for violations of section 337, a complainant must show, in addition to an unfair act or method of competition, that the tendency or effect of the act is to destroy or substantially injure a U.S. industry; to prevent the establishment of a U.S. industry; or to restrain or monopolize U.S. trade and commerce.

House bill

The House bill removes the requirement to prove injury, but only with regard to certain intellectual property rights cases involving patents, copyrights, registered trademarks, and mask works. In those cases, reference is made to "the importation into the United States, the sale for importation, or the sale within the United States after importation" of specified articles. For all other cases, the House bill retains the requirement to prove injury, but substitutes the word "threat" for "tendency."

Senate amendment

The Senate amendment is the same as the House bill, except that with regard to cases in which the injury requirement is maintained, it adds *impairment* of, as well as the prevention of, the establishment of an industry.

Conference agreement

The Senate recedes on the impairment language.

The substitution of the word "threat" for "tendency" merely is intended to codify current Commission practice with respect to its interpretation of the word "tendency," under which the Commission construes "tendency" as "threat." The wording change is not intended to introduce a new standard for proving injury.

In changing the wording with respect to importation or sale, the conferees do not intend to change the interpretation or implementation of current law as it applies to the importation or sale of articles that infringe certain U.S. intellectual property rights.

3. Industry (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

(a) "Efficiently and economically operated"

Present law

Injury under section 337 must be shown to have occurred to an "industry efficiently and economically operated in the United States."

House bill

The House bill retains the requirement to demonstrate that an industry exists or is in the process of being established in the United States but removes the requirement to demonstrate that it is "efficiently and economically operated."

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The conferees agreed to the House and Senate provisions.

(b) Definition

Present law

There is no specific definition of the term "industry."

House bill

In those intellectual property rights cases involving copyrights, patents, registered trademarks, and mask works, the House bill specifically defines industry to include—

(1) significant investment in plant and equipment;

(2) significant employment of labor or capital; or

(3) substantial investment in exploitation of the intellectual property right, including engineering, research and development, or licensing.

Senate amendment

The Senate amendment is the same as the House bill, except that the industry definition also applies to common-law trademarks and trade secrets.

Conference agreement

The Senate recedes.

4. Termination of investigation by consent order or settlement agreement (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

Section 337 does not explicitly provide authority to terminate investigations on the basis of a consent order or settlement agreement, although the Commission follows such procedures in practice.

House bill

The House bill makes explicit the Commission's authority to terminate investigations in whole or part on the basis of a consent order or settlement agreement.

Senate amendment

Identical provision.

Conference agreement

The conferees agreed to the House and Senate provisions.

5. Time limits for temporary exclusion orders (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

Under section 337, the Commission is empowered to issue temporary exclusion orders prohibiting the entry of merchandise (except under bond) during the pendency of an investigation. There are no statutory time limits for the issuance of temporary exclusion orders (although ITC rules establish a 7-month deadline).

House bill

The House bill requires determinations by the Commission on petitions for temporary exclusion orders within 90 days after case is initiated (plus 60 additional days in more complicated cases). Additionally, the House provision provides for forfeiture of the bond to the respondent in those cases where the Commission determines that a respondent did not violate section 337. The House provision also requires the ITC to prescribe rules regarding when the bond should be forfeited.

Senate amendment

The Senate amendment is the same as the House bill, except that it does not provide for forfeiture of the bond to the respondent.

Conference agreement

The House recedes.

The conferees note that under this section, preliminary relief may be granted to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure (FRCP). Notwithstanding any other requirements of the FRCP, the conferees expect that the Commission will not grant temporary relief in the form of a temporary exclusion order without conducting an *inter partes* hearing as required by the Administrative Procedures Act.

In addition, the conferees recognize that establishing rules for bonding may require more time than that provided by this section, for which the effective date is the date of enactment. The conferees have provided up to 90 days after the date of enactment for the issuance of interim rules implementing the bonding provision. In allowing additional time, however, the conferees reiterate their strong interest in seeing the bonding provisions implemented in as expeditious a fashion as possible. The conferees expect that, at a minimum, interim rules can be promulgated before the expiration of the additional time period authorized.

Finally, the conferees adopt by reference the colloquy relating to section 337 temporary exclusion orders (TEOs) and the posting of bonds by petitioners which was part of Senate debate on July 21, 1987 (Congressional Record at S10364), with the exception of the sentence that reads, "The ITC should require the complainant to post a bond where it is necessary to prevent harm to the respondent." The conferees note that the purpose of the bonding provision is to prevent the use of TEOs as a form of harassment of respondents or for other unjustified or frivolous purposes. Such a purpose is consistent with the provision allowing forfeiture of the bond to the Treasury, under which a disincentive for abuse of requests for TEOs by a complainant is established but no compensation is awarded to a respondent. In helping to prevent abuse of TEOs by complainants, however, the bonding provision also will help to prevent harm to a respondent.

6. Cease and desist orders (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

Section 337(f) provides for the Commission's use of cease and desist orders "in lieu of" the exclusion of articles.

Maximum daily penalties for the violation of such orders are set at the greater of $10,000 or the domestic value of the articles.

House bill

The House bill clarifies that cease and desist orders may be used "*in addition to* or in lieu of" exclusion.

It also increases the maximum daily penalty for violation of such orders to the greater of $10,000 or twice the domestic value of the articles.

Senate amendment

The provision relating to clarification of cease and desist orders is identical to the House bill.

Under the Senate amendment, the maximum civil penalty would be $100,000 or the domestic value of the articles.

Conference agreement

The conferees agreed to merge the House and Senate provisions, clarifying existing authority for cease and desist orders and authorizing a maximum daily penalty of $100,000 or twice the domestic value of the articles.

7. Default provisions (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

There is no default provision in section 337. The Commission requires a complainant to establish a *prima facie* case of violation of section 337 in order to prevail if a respondent fails to appear.

House bill

The House bill provides that, when a respondent fails to appear, the ITC shall presume the facts alleged in the complaint to be true and shall, upon request, issue appropriate relief solely against that person.

If no respondent contests the investigation, and a violation is established by substantial, reliable, and probative evidence, a general exclusion order may be issued.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The conferees agreed to the House and Senate provisions.

8. Abuse of discovery (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

Section 337 does not authorize sanctions for abuse of discovery or abuse of process.

House bill

The House bill authorizes the Commission by rule to prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rules 11 and 37 of the Federal Rules of Civil Procedure.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The conferees agreed to the House and Senate provisions.

9. Modification or rescission of section 337 orders (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

Section 337 does not provide specifically for modification or rescission of section 337 orders, but it does provide that exclusion orders shall remain in effect until the Commission finds, and so notifies the Treasury, that the conditions which led to the exclusion no longer exist.

House bill

The House bill provides that when a person previously found in violation petitions the Commission for a determination that he is no longer in violation or for a modification or rescission of an order—

(1) the burden of proof is on the petitioner, and

(2) relief may be granted only on the basis of new evidence or evidence that could not have been presented earlier, or on grounds which would permit relief under the Federal Rules of Civil Procedure.

Senate amendment

The Senate amendment is the same as the House bill, except that the provision applies only to a person previously found in violation in a contested case.

Conference agreement

The Senate recedes.

The conferees note that the purpose of this provision is to clarify the burden of proof with respect to the petitioner requesting modification or rescission. The burden of proof with respect to substantive issues in the original proceeding (e.g., proof of infringement) is not altered by this provision.

10. U.S. Government Importation (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

Importations by or for the use of the U.S. Government are exempt from ITC exclusion orders in cases based on patent claims. Patent owners are entitled to compensation.

House bill

The House bill broadens the exemption to include copyrights, registered trademarks, or mask works.

Senate amendment

The Senate amendment broadens the exemption to include copyrights, trademarks, trade secrets, and mask works.

Conference agreement

The conferees agreed to eliminate both bills' reference to trademarks and the Senate amendment's reference to trade se-

crets, due to Department of Justice concerns about expanding coverage to those items.

11. Confidential information (sec. 172(a) of House bill; sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

There is no provision in section 337 for the treatment of confidential information, but current ITC practice provides that confidential information shall be disclosed only under specified circumstances.

House bill

The House bill provides that information submitted to the Commission and designated confidential shall not be disclosed without the consent of the submitting party except under protective order or to those officers or employees of the Commission, the U.S. Government, or the U.S. Customs Service who are directly involved in the case.

Senate amendment

The Senate amendment is the same as the House bill, except that persons engaged in the Presidential review process are not included in the list of those entitled to disclosure.

Conference agreement

The Senate recedes, with an amendment providing that information which is properly designated as confidential under Commission rules may not be disclosed, except under protective order, without the consent of the person submitting it.

12. Review of ITC determination (sec. 172(a) of House bill; sec. 1342(a) of conference agreement)

Present law

If the ITC determines that there is a violation of section 337, the determination is transmitted to the President for review. Within 60 days of receiving the determination, the President may act to disapprove it.

House bill

Under the House bill, authority to review and disapprove ITC determinations and proposed actions is transferred to the USTR.

Senate amendment

The Senate amendment retains present law.

Conference agreement

The House recedes.

13. Seizure and forfeiture (sec. 401(a) of Senate amendment; sec. 1342(a) of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment authorizes the ITC to order seizure and forfeiture of an article that is subject to an exclusion order when: the owner, importer, or consignee has previously attempted to import the article; it was previously denied entry; and the Secretary of the Treasury provided notice that a further attempt to enter the article would result in seizure and forfeiture.

Conference agreement

The House recedes, with a modification requiring the Secretary of the Treasury to notify the Commission when conditions for seizure and forfeiture have been met.

The intent of the seizure and forfeiture authority is to act as a deterrent to importers who knowingly attempt to circumvent a section 337 exclusion order by "port shopping" or by other repeated attempts to enter goods or like goods subject to the order.

In order to eliminate apparent confusion in the importer community as to the scope of general exclusion orders, the conferees note that such orders prohibit the importation of all infringing articles regardless of whether the importer of the articles was a respondent in the section 337 investigation that resulted in issuance of the order. *Sealed Air Corp. v. U.S. International Trade Commission*, 645 F.2nd 976, 985-986 (C.C.P.A.) (1981).

PART 4—TELECOMMUNICATIONS TRADE

1. Short title (sec. 201 of House bill; sec. 901 of Senate amendment; sec. 1371 of conference agreement)

Present law

There is no statute dealing specifically with international trade in telecommunications products and services. Section 301 of the Trade Act of 1974 authorizes the President to take action against unfair trade practices in all industries, including telecommunications.

House bill

Telecommunications Trade Act of 1987.

Senate amendment

Identical provision.

Conference agreement

The conferees agreed to change the date to 1988.

2. Findings and purposes (sec. 202 of House bill; sec. 902 of Senate amendment; sec. 1372 of conference agreement)

House bill

The House bill contains general findings and purposes regarding trade in telecommunications and the importance of foreign market access.

Senate amendment

The Senate amendment is similar to the House bill, but it contains two findings not found in the House bill:

(1) U.S. deregulation and divestiture of AT&T represent a U.S. unilateral trade concession to the rest of the world.

(2) The unique conditions in the world telecommunications market create a need to make an exception that should not necessarily be a precedent for legislating specific sectoral trade priorities.

Conference agreement

The conferees agreed to merge the House and Senate provisions with amendments, one deletion, and an addition.

3. Standard of foreign market openness

House bill

The House bill establishes a standard of "fully competitive market opportunities" for telecommunications products and services of U.S. firms. The term is not otherwise defined, except that the list of negotiating objectives in the bill establishes the sorts of conditions which characterize "fully competitive market opportunities."

Senate amendment

The Senate amendment establishes a standard of "substantially equivalent competitive opportunities" for telecommunications products and services of U.S. firms. This term is not otherwise defined except as suggested by negotiating objectives.

Conference agreement

The conferees agreed to strike both the House and Senate language and adopt a new standard—"mutually advantageous market opportunities."

The concept "mutually advantageous market opportunities" reflects the overriding objective of United States trade policy in telecommunications, which is the opening of foreign markets to provide an opportunity for U.S. firms to compete on the basis of comparative advantage, just as foreign firms compete in the U.S. market. It is not intended to suggest that foreign telecommunications markets must be a mirror image of the U.S. market.

The bill contains no stated or implied requirement for the denationalization of telecommunications monopolies or for the elimination of vertical integration within foreign telecommunications industries. Rather, the bill assumes that specific negotiating objectives for each country will be established within the context of the existing market structure of that country, with a view to achieving the bill's general negotiating objectives—in brief, trade agreements that provide mutually advantageous market opportunities for trade between the United States and other countries; correction of imbalances in market opportunities due to U.S. liberalization; and facilitation of increased U.S. exports to a level that reflects the competitiveness of the U.S. telecommunications industry. The eventual goal is market liberalization in priority foreign countries that will give U.S. firms competitive opportunities in those countries which are comparable to the opportunities available to foreign firms in the U.S. market.

4. Negotiating objectives (sec. 203 of House bill; sec. 905(a) of Senate amendment; sec. 1375 (c) and (d) of conference agreement)

House bill

This section sets forth six primary and seven secondary negotiating objectives to be referred to by the USTR for the purpose of establishing specific negotiating objectives on a country-by-country basis.

The primary negotiating objectives are:

(1) nondiscriminatory procurement of telecommunications products and services by foreign telecommunications service providers that are owned, regulated or controlled by foreign governments;

(2) assurances that any requirement for registration of telecommunications products be limited to certification by the manufacturer that the products meet local standards for preventing harm to the network or network personnel;

(3) open and transparent standards-setting processes for telecommunications products;

(4) the ability to have telecommunications products approved and registered by type and, if appropriate, establishment of procedures between the U.S. and foreign countries for mutual recognition of type approvals;

(5) reasonable and nondiscriminatory terms and conditions for access by value-added service providers to the telecommunications network; and

(6) monitoring and effective dispute settlement for items (1) through (5).

The secondary negotiating objectives are:

(1) national treatment for U.S. telecommunications products and services;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies, and inclusion of telecommunications products and services in the Government Procurement Code;

(4) reduction or elimination of duties on telecommunications products;

(5) elimination of subsidies, dumping, violations of intellectual property rights, and other trade-distorting unfair trade practices;

(6) elimination of investment barriers; and

(7) monitoring and dispute settlement mechanisms to facilitate telecommunications trade agreement and compliance.

Senate amendment

The Senate amendment sets forth four general and eight specific negotiating objectives to be sought by the President in negotiations with foreign countries identified by the USTR as denying substantially equivalent competitive opportunities for U.S. firms.

The general negotiating objectives are:

(1) to obtain multilateral or bilateral agreements providing substantially equivalent competitive opportunities for U.S. firms;

(2) to correct the imbalance in competitive opportunities stemming from uncompensated U.S. market opening;

(3) to facilitate the increase in U.S. exports to a level that reflects the competitiveness of the U.S. telecommunications industry; and

(4) to enhance U.S. employment growth in telecommunications and related industries.

The specific negotiating objectives are identical to the House secondary negotiating objectives, except for the eighth objective, which is similar to one of the House primary objectives—adoption by foreign countries of equipment standards and certification procedures that do not exceed the minimum necessary to prevent harm to the telecommunications network.

Conference agreement

The conferees agreed to merge the House and Senate negotiating objectives and to form an "umbrella" list of mandatory objectives based on the Senate amendment's general negotiating objectives, with one deletion. They also agreed to merge the House primary and secondary negotiating objectives with the Senate's specific objectives to form a single list of specific objectives. The President is to select specific objectives on a country-by-country basis as necessary to meet the general "umbrella" objectives.

As to negotiating objective number 11—relating to nondiscriminatory procurement by foreign entities that provide local exchange telecommunications services which are owned, controlled, or, if appropriate, regulated by foreign governments—it is the intent of the conferees that this objective apply not only to such state-owned telecommunications monopolies as exist in France, Germany, and a number of other European countries, but also to such entities as Nippon Telephone and Telegraph of Japan, British Telecom of the United Kingdom, and Bell Canada of Canada. Those governments maintain de facto control over, or direction of, the policies and practices of these telecommunications providers. Such control may be exercised not only through large stock holdings in these companies but also through regulation. It is further the intent of the conferees that foreign entities which undergo a process of denationalization in the future and for which de facto government control is exercised through regulation or other means be covered by the telecommunications provisions in order to ensure nondiscriminatory procurement practices. The negotiating objective is not intended to cover truly private foreign firms which compete in their domestic markets with such government-controlled entities as those noted above.

5. Investigations and establishment of negotiating objectives

a. Investigations (sec. 204 of House bill; sec. 904 of Senate amendment; sec. 1374 of conference agreement)

House bill

Within 180 days of enactment, the USTR must identify and analyze those foreign acts, policies, and practices that deny fully competitive market opportunities to the telecommunications products and services of U.S. firms.

Senate amendment

Within 4 months of enactment, the USTR must (1) identify and analyze all foreign acts, policies, and practices that deny to telecommunications products and services of U.S. firms any competitive opportunities that are substantially equivalent to competitive opportunities available to foreign firms in the U.S. market, and (2) identify which of those acts, policies or practices denies or impairs benefits to the U.S. under existing trade agreements. In making determinations under (2) above, the USTR must consider any evidence of patterns of trade that do not reflect the patterns that would reasonably be expected to flow from the foreign country's trade agreement concessions or commitments as creating a presumption of an act, policy or practice that denies or impairs U.S. trade agreement benefits. In conducting this analysis, the USTR shall take into account:

(1) the actual or potential economic benefits to foreign firms from open access to the U.S. market, and

(2) the actual patterns of trade, including U.S. exports in relation to the international competitive position and export potential of those exports.

The USTR is required to consult with the ITC with regard to actual patterns of trade.

Conference agreement

The conferees agreed to drop both the House and Senate provisions and adopt a new provision:

(i) Requiring USTR to conclude investigations within five months after date of enactment.

(ii) Requiring USTR to undertake investigations of "priority" foreign countries. In identifying priority foreign countries, USTR shall take into account, among other relevant factors:

(A) The nature and significance of the acts, policies, and practices that deny mutually advantageous market opportunities to telecommunications products and services of U.S. firms;

(B) The economic benefits (actual and potential) accruing to foreign firms from open access to the U.S. market;

(C) The potential size of the market for telecommunications products and services of U.S. firms;

(D) The potential to increase U.S. exports of telecommunications products and services, either directly or through the establishment of a beneficial precedent; and

(E) Measurable progress being made to eliminate the objectionable acts, policies, or practices.

USTR may, at any subsequent time, identify any new priority country, or drop any designated priority country, taking into account factors (A) through (E).

(iii) Providing that after consulting with industry, labor, and the Congress, the President may refine or modify specific negotiating objectives for particular negotiations in order to respond to circumstances arising during the negotiating period, including changed practices by the country in question, tangible substantive developments in multilateral negotiations, changes in competitive positions, technological developments, or other relevant factors.

Within 30 days of any refinement or modification, the President must submit to appropriate committees of the Congress a statement describing the changes made and any justifications therefor.

b. Establishment of negotiating objectives (sec. 204(a) of House bill; sec. 905(a) of Senate amendment; sec. 1375(b) and (c) of conference agreement)

House bill

Drawing from the primary and secondary objectives, the USTR must establish specific negotiating objectives for each country identified, which should be pursued to obtain fully competitive market opportunities. In establishing the negotiating objectives for a particular country, the USTR is to take into account:

(1) the needs of affected U.S. industries;

(2) the competitiveness of U.S. industries in U.S. and world markets;

(3) the progress being made to expand market opportunities under existing agreements and ongoing negotiations; and

(4) the availability of incentives and remedies.

Senate amendment

The objectives the President must pursue in negotiations must include, but are not limited to, the specific negotiating objectives of the Senate amendment. In pursuing these objectives and the general negotiating objectives, the President must take into account the actual or potential economic benefits to foreign firms from open access to the U.S. market, and the actual patterns of trade, including U.S. exports in relation to the international competitive position and export potential of those exports.

Conference agreement

The conferees agreed to merge the House and Senate provisions by requiring the President to establish specific objectives on a country-by-country basis, drawing from the merged House and Senate negotiating objectives.

The House recedes on the four factors to be taken into account.

6. Consultation (sec. 207 of House bill; secs. 904, 907 of Senate amendment; sec. 1379 of conference agreement)

House bill

The House bill provides that the USTR must consult with the private sector in establishing negotiating objectives.

Senate amendment

The Senate amendment is substantially the same as the House bill.

Conference agreement

The conferees agreed to merge the House and Senate provisions.

7. Petitions by interested parties; self-initiation (sec. 204 of House bill)

House bill

Investigations may be prompted either by petitions from interested parties or self-initiation by the USTR, except that no petition may be filed before the completion of investigations mandated by the bill (maximum of 6 months after enactment). Any investigation and a final determination must be made within 6 months of initiation of the investigation (in the case of self-initiation) or of the date a petition is filed.

Senate amendment

No provision.

Conference agreement

The House recedes.

8. Exclusion of countries with limited market potential (sec. 204(a) of House bill; sec. 904(c) of Senate amendment)

House bill

The USTR may exclude from investigation any country whose potential market for U.S. telecommunications products and services is not substantial.

Senate amendment

The Senate amendment is the same as the House bill, except the USTR must consult with the Committees on Ways and Means and Finance, publish a Federal Register notice, and provide opportunity for written public comment prior to excluding any country.

Conference agreement

The conferees agreed to drop both the House and Senate provisions.

9. Review of countries excluded from investigation (sec. 204(c) of House bill)

House bill

The House bill requires review, at least annually, of the market potential of countries previously excluded from investigation due to small market size. An investigation is required if substantial market potential exists.

Senate amendment

No provision.

Conference agreement

The House recedes.

10. Report to Congress (sec. 204(d) of House bill; sec. 904(d) of Senate amendment; sec. 1374(d) of conference agreement)

House bill

The USTR shall report to Congress on all investigations undertaken under section 204. Each report shall be submitted within 30 days of completion of the investigation.

Senate amendment

The USTR shall report to the Committees on Finance and Commerce in the Senate and the Committees on Ways and Means and Energy and Commerce in the House within 4 months of enactment on the analysis and determinations made on foreign barriers.

Conference agreement

The Senate recedes, with the report to be submitted to appropriate committees of the Congress.

11. Action by President in response to investigations (sec. 205 of House bill; sec. 905 of Senate amendment)

a. Negotiations (sec. 205(a) of House bill; sec. 905(a) of Senate amendment; sec. 1375 of conference agreement)

House bill

The House bill provides that after investigations are completed, the President must enter into negotiations with countries subject to investigation. The purpose of the negotiations is to enter into bilateral or multilateral agreements which achieve the objectives established by the USTR for each country or group of countries.

Senate amendment

The Senate amendment provides that after investigations are completed, the President must enter into negotiations with countries identified by the USTR as denying substantially equivalent competitive opportunities. The purpose of the negotiations is to enter into bilateral or multilateral trade agreements which provide to telecommunications products and services of U.S. firms substantially equivalent competitive opportunities, based on the objectives set forth in this section. In pursuing these objectives, the President must take into account the actual or potential economic benefits to foreign firms from open access to the U.S. market, and the actual patterns of trade, including U.S. exports in relation to the international competitive position and export potential of those exports.

Conference agreement

The conferees agreed to merge the House and Senate provisions, using the new standard of foreign market openness and cross-referencing the merged and revised negotiating objectives.

b. Time limit for negotiations (sec. 205(c) of House bill; sec. 905(b) of Senate amendment; sec. 1376(c) of conference agreement)

House bill

The House bill provides that in the case of negotiations entered into as a result of investigations mandated by the bill, agreements must be reached no later than 18 months after enactment. In the case of investigations entered into as a result of self-initiation or petition, agreements must be entered into within 12 months after the commencement of negotiations.

Senate amendment

The Senate amendment provides that agreements must be reached no later than 18 months after enactment.

Conference agreement

The House recedes, with an amendment providing that for countries subsequently identified and added to the list of priority countries, agreements must be reached no later than 12 months after such identification.

c. Extension of negotiating period (sec. 205(c) of House bill; sec. 1376(c) of conference agreement)

House bill

The House bill provides that the President may request up to 2 one-year extensions of negotiating authority, subject to "fast-track" Congressional approval, by submitting a draft bill at least 90 days prior to the expiration of the negotiating period and a statement that: (1) substantial progress is being made in negotiations; and (2) further negotiations are necessary to achieve the objectives.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment dropping the requirement for fast-track Congressional approval of extensions of the negotiating period but requiring the President to submit a report to appropriate committees of the Congress, indicating that substantial progress is being made in negotiations and outlining the reasons that an extension is necessary.

d. Consultations (sec. 207 of House bill; sec. 907 of Senate amendment; sec. 1379 of conference agreement)

House bill

The House bill provides that the President must keep the Committees on Ways and Means and Finance informed of negotiating priorities and objectives; prospects; and any U.S. concessions which may be required. He also shall consult with the private sector.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conferees agreed to the House and Senate provisions, with an amendment providing that the USTR, not the President, shall keep the committees informed and consult with the private sector.

12. Actions to be taken by President if no agreement (sec. 205(b) of House bill; sec. 905(b) of Senate amendment; sec. 1376 of conference agreement)

a. Mandatory action

House bill

The House bill provides that if the President is unable to enter into an agreement which achieves the primary objectives established by the USTR, he shall take whatever actions authorized in the bill are necessary and appropriate to achieve the purposes of such primary objectives not covered by agreement. Any action the President decides to take under this item shall be treated as an action necessary to implement a trade agreement for the purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974.

Senate amendment

The Senate amendment provides that if the President is unable to enter into an agreement which achieves the objectives set forth in this section, he shall submit a draft bill which implements whatever actions authorized in the bill are necessary to fully achieve such objectives, subject to "fast-track" approval.

Conference agreement

The House recedes, with an amendment dropping the requirement for fast-track Congressional approval and substituting a requirement that the President take whatever actions authorized in the bill are appropriate and most likely to achieve the general negotiating objectives, as defined by the specific objectives established by the President for the individual country concerned.

b. Discretionary action

House bill

The House bill provides that if the agreement fails to achieve any secondary objectives established by the USTR, the President may take whatever actions are necessary to achieve those objectives.

Senate amendment

No provision.

Conference agreement

The House recedes.

c. Authorized actions

House bill

Under the House bill, the President is authorized to take the following actions:

(1) Terminate or suspend any portion of a trade agreement with respect to any U.S. duty or trade restriction on a telecommunications product.

(2) Any action described in section 301.

(3) Prohibit the Federal government from purchasing specified telecommunications products.

(4) Increase domestic preferences for Federal purchases.

(5) Suspend any waiver of domestic preferences.

(6) Order the denial of Federal funds or credits for the purchase of specified foreign products.

(7) Suspend GSP benefits.

The actions taken must first be those that most directly affect trade in telecommunications products and services from the country concerned.

Senate amendment

The Senate amendment is substantially identical to the House bill, except that, among other things, it requires the application of tariff rates provided for in column 2 of the Tariff Schedules of the United States.

Conference agreement

The conferees agreed to merge the House and Senate provisions, with amendments, including striking any reference to column 2 tariff rates. Action shall be taken first against telecommunications products and services, unless the President determines that action against other sectors would be a more effective means of meeting the negotiating objectives.

d. Contract sanctity

House bill

Under the House bill, contracts entered into before the date of enactment of the bill are grandfathered.

Senate amendment

Under the Senate amendment, contracts entered into before April 17, 1985, are grandfathered.

Conference agreement

The conferees agreed to delete the provisions of both the House bill and the Senate amendment exempting binding obligations under a written contract from any action taken by the President. The conferees were concerned that such an exemption would be difficult to enforce and that a blanket exemption would hamper the President's discretion in taking appropriate action. The conferees intend that the President be authorized to choose from among a broad range of offsetting measures. Should the imposition of offsetting measures be necessary, the President is expected to use the flexibility provided to impose those restrictions that are likely to have the most profound effect on the specific country involved, to moderate or preclude any cost of compensation, and to minimize the negative impact on domestic purchasers of equipment and services. In this last regard, the Administration is expected to pay serious attention to concerns of such purchasers, taking into account such factors as the ready availability of alternate sources of supply, the price and technological competitiveness of such suppliers, the technological compatibility of their products as they relate to multi-year investment projects, and the existence of outstanding contractual obligations. The President should exercise his flexibility under this Act so as to ensure that the benefits to U.S. telecommunications interests outweigh any harm to such interests. The availability of a range of options, however, does not eliminate the requirement that his actions be of sufficient magnitude to fully achieve the applicable objectives.

e. Consultations (sec. 207 of House bill; sec. 905(b) of Senate amendment; sec. 1379 of conference agreement)

House bill

The House bill provides that the President must consult with the private sector, including labor, and the interagency trade organization in determining which actions to take.

Senate amendment

The Senate amendment provides that at least 90 days before a draft bill of proposed actions is submitted, the President must consult with the Committee on Finance in the Senate and the Committee on Ways and Means in the House on its content, and submit a document explaining the bill.

Conference agreement

The conferees agreed to merge the House and Senate provisions, dropping the reference in the Senate amendment to a draft bill of proposed actions.

13. Modification or termination of actions (sec. 205(d), (e) of House bill; sec. 1376(d) of conference agreement)

House bill

The House bill provides that the President may modify or terminate any action taken against a country only if that country enters into an agreement which achieves the specific objective regarding which such action was taken. He shall promptly inform appropriate Congressional committees of such modification or termination.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment authorizing the President to modify or terminate any action taken if changed circumstances warrant, taking into consideration the five factors originally used for designating a priority country (under item #5 above).

14. Enforcement of trade agreements (sec. 206 of House bill; sec. 906 of Senate amendment; sec. 1377 of conference agreement)

a. Annual reviews (sec. 206(b) of House bill; sec. 906(b) of Senate amendment; sec. 1377(a) of conference agreement)

House bill

The House bill requires the USTR to conduct reviews to determine whether any act, policy, or practice of a country with which a telecommunications trade agreement has been reached:

—is not in compliance with the terms of the agreement, or

—otherwise denies fully competitive market opportunities under the agreement.

If an agreement was entered into under this bill, the first review is to take place within 6 months of the date the agreement enters into force, and annually thereafter. If the agreement was in existence on the date of enactment the first review is to occur within 18 months, and annually thereafter.

Senate amendment

The Senate amendment requires an annual review by USTR to assess the extent to which the objectives are being met by each foreign country whose acts, policies, or practices were identified as denying substantially equivalent competitive opportunities. It also requires an annual report to Congress on such reviews.

Conference agreement

The Senate recedes, with an amendment requiring the annual review to be conducted in the context of the National Trade Estimate Report on Foreign Trade Barriers required in section 181 of the Trade Act of 1974, and other amendments conforming the provision to changes made elsewhere in the Telecommunications Trade Act.

b. Review factors (sec. 206(c) of House bill; sec. 904(b) of Senate amendment; sec. 1377(b) of conference agreement)

House bill

The House bill provides that in making a determination on a foreign country's compliance with a telecommunications trade agreement, the USTR is required to "consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and 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." The USTR must consult with the ITC with regard to "actual patterns of trade."

Senate amendment

The Senate amendment is nearly identical to the House bill, except that the USTR also must take into account the economic benefits to foreign firms from the open U.S. market.

Conference agreement

The Senate recedes.

c. Action in response to affirmative review determination generally (sec. 206(d) of House bill; sec. 906(b) of Senate amendment; sec. 1377(c) of conference agreement)

House bill

Under the House bill, if the USTR determines that a country's acts, policies, or practices violate a telecommunications trade agreement or deny fully competitive market opportunities under the agreement, he shall take whatever authorized actions are necessary to: (a) fully offset the foreign act, policy, or practice, and (b) restore the balance of concessions between the United States and the foreign country in telecommunications trade.

Senate amendment

The Senate amendment is the same as the House bill, except the standard is "substantially equivalent competitive opportunities," and the USTR's actions must "restore the balance of competitive opportunities" between the United States and the foreign country.

Conference agreement

The conferees agreed to strike both the House and Senate provisions, substituting for them a new provision requiring that if the USTR determines that a country's acts, policies, or practices violate a telecommunications trade agreement or deny mutually advantageous market opportunities under the agreement, it shall be treated as a trade agreement violation under section 301 of the Trade Act of 1974, as amended.

The conferees intend that if, as a result of a review of a trade agreement under the telecommunications provisions, the USTR determines that a country is not in compliance with the terms of the agreement, that determination will be considered as an affirmative determination under section 301, and the USTR will conduct no further investigation of the foreign act, policy, or practice. The provisions of section 301 as they apply to trade agreement violations or other "unjustifiable" practices would apply in such cases.

d. Action against country with prior agreement (sec. 206(d) of House bill; sec. 906(a) of Senate amendment)

House bill

Under the House bill, action may not be taken by the USTR against a country with an agreement in existence on the date of enactment before action has been taken by the President against any other country.

Senate amendment

The Senate amendment permits action against a country with a prior agreement both as a result of the initial investigation as well as after annual reviews. If, as a result of the initial investigation, the USTR determines that an act, policy or practice of a foreign country denies or impairs U.S. benefits under an existing trade agreement, the USTR must take whatever authorized actions are necessary to fully offset the acts, policies or practices and to restore the balance of concessions between the United States and the foreign country. In the case of an affirmative determination made under an annual review, the USTR must take whatever authorized actions are necessary to restore the balance of competitive opportunities between the United States and the foreign country.

Conference agreement

The conferees agreed to drop both the House and Senate provisions. The conferees note that section 301 of the Trade Act of 1974, as amended, is available for action against countries with a prior agreement, as it is for countries with which agreements are negotiated under the Telecommunications Trade Act.

e. Actions authorized (sec. 206(e) of House bill; sec. 906(c) of Senate amendment; sec. 1377(e)(2) of conference agreement)

House bill

Under the House bill, the USTR is authorized to terminate, withdraw, or suspend trade agreements or take any action under section 301 of the Trade Act of 1974, except that action may be taken against products and services outside the telecommunications sector from the country concerned only if the USTR has taken all feasible actions against that country's telecommunications products and services and the applicable negotiating objectives have not been achieved.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conferees agreed to strike both the House and Senate provisions and to adopt an amended version of the provision requiring that action be taken first against telecommunications products and services.

f. "Fast-track" approval (sec. 206(e)(4) of House bill)

House bill

Under the Housee bill, any action the Trade Representative decides to take under item 14(e) shall be treated as necessary to implement a trade agreement for the purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974.

Senate amendment

No provision.

Conference agreement

The House recedes.

g. Contract sanctity (sec. 206(f) of House bill; sec. 906(d) of Senate amendment)

House bill

The House bill provides that contracts entered into before the date of enactment of the bill are grandfathered.

Senate amendment

The Senate amendment provides that contracts entered into before April 17, 1985, are grandfathered.

Conference agreement

The conferees agreed to strike both the House and Senate provisions for the reasons outlined under item 12(d).

h. Consultations (sec. 207 of House bill; sec. 907 of Senate amendment) sec. 1379 of conference agreement)

House bill

The House bill provides that the USTR must consult with the Secretary of Commerce, the interagency trade organization and the private sector, including labor, in determining what actions to take.

Senate amendment

The Senate amendment is the same as the House bill, except that it adds a requirement for consultation with the Federal Communications Commission.

Conference agreement

The Senate recedes, with a modification dropping separate reference to the Secretary of Commerce, who is part of the interagency trade organization.

i. Separate 301 action (sec. 906(e) of Senate amendment)

Present law

The President may take action against unfair foreign acts, policies and practices under section 301 of the Trade Act of 1974.

House bill

No provision.

Senate amendment

The Senate amendment specifies that nothing in this section precludes the President from taking separate action, on his own motion or upon petition by an interested party, under section 301 of the Trade Act of 1974.

Conference agreement

The Senate recedes. The conferees note that nothing in the Telecommunications Trade Act precludes the USTR from taking separate action under section 301 of the Trade Act of 1974, either on his own motion or upon petition by an interested party.

j. Modification and termination authority (sec. 206(g), (h) of House bill)

House bill

Under the House bill, the USTR may modify or terminate actions taken against a country only if he determines that the country has taken appropriate remedial action regarding the act, policy, or practice concerned. Appropriate Congressional committees must be informed promptly of any modification or termination.

Senate amendment

No provision.

Conference agreement

The House recedes.

15. Trade agreement authority (sec. 208 of House bill; sec. 908 of Senate amendment; sec. 1102 of conference agreement)

House bill

The House bill provides forty-two-month trade agreement authority. "Fast-track" Congressional approval of trade agreements is required for all agreements except those involving unilateral concessions on the part of a foreign country, which may be implemented by Presidential proclamation.

Senate amendment

The Senate amendment provides three-year trade agreement authority. "Fast-track" Congressional approval of trade agreements is required for all agreements. There is no provision for agreements by Presidential proclamation.

Conference agreement

The Senate recedes with an amendment striking the reference to the President's proclamation authority and referencing the general trade agreement authority of this Act, including the time frame (i.e., until 1993). The general trade agreement authority shall be applicable for implementing any agreement reached either prior to or subsequent to mandated Presidential action.

The conferees note that the period of time authorized for entering into trade agreements exceeds that authorized for negotiating agreements. Additional time for entering into agreements is necessary, because the President may add countries to the list of priority countries at any time; and countries which have been subject to U.S. retaliation due to the failure to reach an agreement may decide subsequently to negotiate an agreement.

The conferees further note that nothing in the Telecommunications Trade Act detracts from the President's authority to proclaim agreements providing for unilateral concessions by a foreign country or to take action when action by the United States already is authorized under other U.S. laws.

a. Non-MFN application of benefits (sec. 208(c) of House bill; sec. 908(c) of Senate amendment)

House bill

The House bill provides that benefits and obligations of trade agreements may apply on a non-MFN basis.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conferees agree to strike the House and Senate provisions, but note that this authority is contained in the general trade agreement authority.

16. Compensation authority (sec. 209 of House bill; sec. 909 of Senate amendment; sec. 1378 of conference agreement)

House bill

Under the House bill, the President is authorized to compensate any country for actions taken by the President or the USTR, if such action is found to be inconsistent with U.S. international obligations. A compensation package is subject to "fast-track" Congressional approval.

Senate amendment

Under the Senate amendment, the President is authorized to compensate any foreign country if—

(1) the President has taken action in response to an investigation and the USTR is not required to take action against the same country (because the foreign acts, policies or practices at issue do not impair or deny U.S. trade agreement benefits); or

(2) the USTR takes action that is subsequently found to be inconsistent with U.S. international legal obligations.

A compensation agreement is subject to "fast-track" Congressional approval. In con-

sidering whether to enter into a compensation agreement, the President must take into account the actual or potential economic benefits to foreign firms from open access to the U.S. market, and the actual patterns of trade, including U.S. exports in relation to the international competitive position and export potential of those exports.

Conference agreement

The conferees agreed to merge the House and Senate provisions and to drop the requirement for "fast-track" Congressional approval of the compensation package. The conferees also dropped compensation authority for actions taken by USTR and noted that separate compensation authority for such action exists under section 301 of the Trade Act of 1974, as amended.

The conferees anticipate that any compensation owed in response to Presidential action under the Telecommunications Trade Act—particularly if he conducts negotiations under Article XXVIII of the General Agreement on Tariffs and Trade—should be limited, to the extent that credit is obtained for U.S. divestiture, which represents a unilateral liberalization by the United States of its trade with the rest of the world.

17. Definitions (sec. 210 of House bill; sec. 903 of Senate amendment; sec. 1373 of conference agreement)

House bill

The House bill provides a definition of the term "telecommunications product" in terms of Tariff Schedules of the United States (TSUS) numbers.

Senate amendment

The Senate amendment provides a similar definition of "telecommunications product" in terms of TSUS numbers, but adds three numbers—685.10, 685.12, and 685.39—and deletes two numbers—685.32 and 685.34.

Conference agreement

The conferees agreed to merge the House and Senate provisions, with amendments to the TSUS numbers and four deletions.

In order to make clear the meaning of the term "telecommunications products and services," the conferees note that under the Telecommunications Trade Act, international satellites (including transponders) and related services, and international cable facilities and related services, are encompassed within the term "telecommunications products and services." With respect to these and other telecommunications products and services, pursuant to section 1382 of this Act, nothing in the Act is intended to require action that is inconsistent with U.S. obligations under any international telecommunications agreement.

18. International obligations (sec. 211 of House bill; sec. 913 of Senate amendment; sec. 1382 of conference agreement)

House bill

The House bill provides that nothing in this title may be construed to require the President and the U.S. Congress to violate U.S. legal obligations, including GATT obligations.

Senate amendment

The Senate amendment provides that nothing in the subtitle shall be construed to require the President to act in a manner inconsistent with the international legal obligations of the United States.

Conference agreement

The conferees agreed to merge the House and Senate provisions with amendments, including dropping the reference to the Congress.

19. FCC

a. Clarification of factors FCC must consider (sec. 212(a) of House bill)

Present law

The Communications Act of 1934 requires the Federal Communications Commission (FCC), among other things, to make decisions on the basis of the public interest, convenience, and necessity.

House bill

The House bill specifies that in making decisions on the basis of the public interest, convenience, and necessity, the FCC should, where appropriate, take into account the impact of international trade on the ability of the U.S. telecommunications industry to be competitive in the international marketplace and on the ability of the American public to obtain quality services and equipment.

It requires the FCC to consult with the USTR and other appropriate Executive branch officials in making determinations or taking actions which take into account the impact of international trade.

It further provides that the Commission should avoid taking actions which would conflict with or otherwise interfere with separate trade actions, including negotiations, being taken by the USTR or other trade-related agencies.

Senate amendment

No provision.

Conference agreement

The House recedes.

b. Report to Congress (sec. 212(b) of House bill; sec. 1380(a) of conference agreement)

House bill

The House bill requires the FCC, by November 1, 1987, to report to Congress its findings and conclusions reached on the basis of a specified public inquiry and proposed rulemaking relating to international trade in telecommunications goods and services. It requires the FCC to commence a rulemaking on the matter if considered appropriate on the basis of the public inquiry.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment requiring the FCC to submit to appropriate committees of the Congress certain data collected and otherwise made public relating to the sale of foreign telecommunications equipment in the U.S. market.

The requirement that the FCC submit to various committees of the Congress certain data on the sale of foreign telecommunications equipment in the U.S. market should not be interpreted as suggesting that the FCC has any legal authority to formulate trade policy. The FCC may decide at any time to cease the collection of data referred to in this section or to cease further action under the Notice of Inquiry and Proposed Rulemaking (CC Docket No. 86-494), without regard to the requirement under this section to submit data to the Congress.

c. Compliance with FCC regulations (sec. 910 of Senate amendment; sec. 1380(b) of conference agreement)

Present law

Under authority of the Communications Act of 1934, the FCC requires the submission by manufacturers of certain information for registration and approval of telecommunications equipment in the U.S. market.

House bill

No provision.

Senate amendment

The Senate amendment provides that foreign telecommunications products subject to FCC registration or approval may be entered into the United States only if such products conform to FCC rules and regulations and certain information is submitted to a customs officer at the time of entry. The Secretary of the Treasury shall compile the information and submit a summary to Congress at least twice a year.

Conference agreement

The House recedes.

20. Study on telecommunications competitiveness (sec. 212(c) of House bill; sec. 912 of Senate bill)

House bill

The House bill requires the Secretary of Commerce, acting with the FCC and the National Telecommunications and Information Administration, to conduct a study of the competitiveness of the U.S. telecommunications industry and the impact of foreign policies and practices, to assist the Congress and the President in determining what actions may be necessary to preserve the competitiveness of the U.S. industry. The Secretary must provide notice and opportunity for public comment and submit his findings and recommendations to the Congress and President within 210 days of enactment.

Senate amendment

The Senate amendment provides that within 6 months of enactment and at least every 2 years thereafter, the Secretary of Commerce must submit to Congress a report on the impact of U.S. domestic policies and practices on the growth and international competitiveness of the U.S. telecommunications industry. The report shall include a statement of actions taken or recommended to overcome U.S. policies and practices found to inhibit growth and competitiveness, and a statement of the probable trade impact of failure to take such actions.

Conference agreement

The Senate recedes with an amendment requiring the Secretary of Commerce to conduct the study in consultation with the FCC and the USTR, to submit the report within one year of the date of enactment, and other modifications.

21. Service sector access authorization (sec. 911 of Senate amendment)

Present law

In addition to other retaliatory action, section 301(e)(6) of the Trade Act of 1974 authorizes the President to restrict the terms and conditions or deny the issuance of any service sector access authorization (e.g., license) that permits a foreign supplier of services access to the U.S. market in a service sector concerned.

House bill

No provision.

Senate amendment

The Senate amendment expands the definition of "service sector access authorization" in section 301(e)(6) to apply also to a foreign supplier of goods related to a service. (See separate item under section 301 amendments generally.)

Conference agreement

The Senate recedes.

SUBTITLE D—ADJUSTMENT TO IMPORT COMPETITION

PART 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

Amendments to Sections 201 through 203 of the Trade Act of 1974

(Sec. 131 of House bill; sec. 201 of Senate amendment; sec. 1401 of conference agreement)

a. Action to facilitate positive adjustment to import competition

Present law

If the ITC determines that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President shall provide the import relief that he determines necessary to prevent or remedy the serious injury and facilitate the orderly adjustment to new competitive conditions, unless he determines that such relief is not in the national economic interest.

House bill

The House bill provides that, if the ITC makes an affirmative injury determination as under present law, the USTR shall provide the import relief that USTR determines necessary to prevent or remedy the serious injury and to enhance competitiveness or otherwise facilitate adjustment, unless such relief would threaten U.S. national security or the economic costs of such relief are so great that they outweigh the economic and social benefits of providing relief.

Senate amendment

The Senate amendment provides that, if the ITC makes an affirmative injury determination as under present law, the President must take the actions that the ITC recommends as likely to assist the domestic industry in making a positive adjustment to import competition, or substantially equivalent actions, unless the President determines that such actions would endanger U.S. national security, cause serious injury to a consuming industry in the United States, result in more jobs lost than jobs preserved or created, or disproportionately burden the poor or U.S. agriculture.

A "positive adjustment" occurs when the domestic industry is able to compete successfully with imports after relief terminates, or the domestic industry experiences an orderly transfer of resources to other productive pursuits.

Conference agreement

The House recedes with a substitute amendment providing that, if the ITC makes an affirmative injury determination as under present law, the President shall take all appropriate and feasible action within his power that he determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and will provide greater economic and social benefits than costs.

A "positive adjustment" occurs when (1) the domestic industry is able to compete successfully with imports after termination of action under this section, or the domestic industry experiences an orderly transfer of resources to other productive pursuits, and (2) dislocated workers experience an orderly transition to productive pursuits.

b. ITC investigation and recommendation

1. Purpose of Petitions

Present law

Petitions for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the ITC. The petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition.

House bill

The House bill authorizes petitions to be filed for the purpose of enhancing long-term competitiveness or otherwise facilitating orderly adjustment. It retains present law regarding statement of specific purposes.

Senate amendment

The Senate amendment retains present law regarding general purpose of import relief. It expands the list of specific objectives of import relief to include facilitating the orderly transfer of resources to alternative uses, enhancing competitiveness, or other means of positive adjustment to new conditions of competition.

Conference agreement

The House recedes with a substitute amendment authorizing petitions for action under this section to be filed with the ITC for the purpose of facilitating a positive adjustment to import competition. The petition 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.

2. Industry Adjustment Measures

(a) Industry adjustment plan

Present law

No provision.

House bill

The House bill provides that the petitioner may submit, either with the petition or at any time within four months of petition, a statement of proposed adjustment measures. Such statement should include, to the extent practicable, the following:

(a) an assessment of current problems affecting the industry's ability to compete with imports;

(b) recommendations as to the types of actions that workers and firms could undertake during a period of import relief to improve the ability of the industry to compete after relief terminates or to facilitate adjustment to increased import competition;

(c) recommendations as to the types of actions that may be taken by Federal agencies or departments to assist the domestic industry's efforts either to enhance its competitiveness or to adjust to import competition;

(d) an explanation of how import relief will assist in achieving these objectives.

Senate amendment

The Senate amendment requires that the petitioner submit, in the petition, a plan to promote positive adjustment to import competition, which shall be made public and available for comment.

Conference agreement

The Senate recedes with a substitute amendment authorizing the petitioner to submit, any time within four months of the petition, a plan to promote positive adjustment to import competition.

While the conferees decided to make the submission of an adjustment plan optional, rather than to require its submission, the conferees encourage petitioners for action under this section to submit adjustment plans. The conferees believe that it is important for firms and workers in the petitioning industry to demonstrate to the ITC and the President what steps they will be taking to make a positive adjustment to import competition.

To the extent practicable, the conferees believe that it is appropriate for plans submitted by petitioners to include the following: (a) an assessment of current problems affecting the industry's ability to compete with imports; (b) recommendations as to the types of actions that workers and firms could undertake during a period of import relief to improve the ability of the industry to compete after relief terminates or to facilitate adjustment to increase import competition; (c) recommendations as to the types of actions that may be taken by Federal agencies or departments to assist the domestic industry's efforts either to enhance its competitiveness or to adjust to import competition; and (d) an explanation of how import relief will assist in achieving these objectives.

The conferees believe that the adjustment plan submitted by the petitioner should be made public and available for comment. The conferees expect the ITC to make the plan publicly available, consistent with its rules and procedures regarding confidential information.

(b) Consultations regarding adjustment measures

Present law

There is no specific provision under present law. However, under section 201(c) any interested party to a proceeding (which includes other members of the domestic industry, importers, foreign exporters, and government agencies) may appear before the ITC at hearings or submit its views on the issues of injury and remedy. In practice, interested parties also submit their views to the USTR on the issue of whether import relief should be provided.

House bill

The House bill provides that, before submitting a statement of proposed adjustment measures, the petitioner may request the USTR for an opportunity to consult with the USTR (and any other government officials which the USTR deems appropriate) along with other members of the domestic industry with respect to recommendations likely to be included in such statement. The purpose of the consultations shall be to consider the adequacy of proposed adjustment measures in the context of any relief which might be provided and thereby enable the petitioner to develop a more effective statement of adjustment measures.

If the petitioner so requests, the USTR must provide such opportunity to consult within a reasonable period of time, prior to the date required for submission of the statement (four months after filing of the petition). The USTR shall provide interested parties with adequate notice of the time and place for such consultations. No such consultation may occur unless the USTR or his delegate is present.

Senate amendment

The Senate amendment has no statutory provision for industry-government consulta-

tions. However, the Senate report encourages such ongoing consultations throughout the import relief proceeding and requires the ITC to afford interested parties and consumers an opportunity to comment on any adjustment plan at public hearings.

The Senate amendment states that nothing in this section shall be construed to provide immunity under the antitrust laws for any price-fixing agreement, horizontal restraints of trade or group boycotts which would otherwise be unlawful.

Conference agreement

The Senate recedes with an amendment providing that nothing in this section shall be construed to provide immunity under the antitrust laws.

(c) Individual commitments/submissions

Present law

In order to assist the President with his relief determination, the ITC is required to investigate and report on efforts made by firms and workers to compete more effectively with imports.

House bill

The House bill requires the ITC to seek information, on a confidential basis, from firms and workers in the domestic industry relating to what steps they are taking or plan to take to enhance competitiveness or to adjust to import competition. The ITC shall share such information with the USTR on a confidential basis.

Senate amendment

The Senate amendment provides that, at any time after submission of a petition, any firm, union, community, trade association, person or group of persons may individually submit to the ITC commitments regarding their individual efforts to promote the positive adjustment in the domestic industry to import competition. If the ITC makes an affirmative injury determination, the ITC must seek to obtain, on a confidential basis, commitments from such persons and entities that the ITC considers appropriate, regarding actions such persons and entities intend to take to promote positive adjustment.

Conference agreement

The Senate recedes with a substitute amendment requiring the ITC to seek information, on a confidential basis, from firms and workers in the domestic industry regarding steps they are taking, or plan to take, to make a positive adjustment to import competition. If the ITC makes an affirmative injury determination, any firm, group of workers, community, trade association, or other persons may individually submit to the ITC commitments regarding actions they intend to take to promote a positive adjustment to import competition.

3. ITC Injury Deadline

Present law

Present law has no statutory deadline specifically for the ITC injury determination. The ITC must report both its injury determination and remedy recommendation within six months of petition.

House bill

The House bill requires the ITC to make its injury determination within 120 days of petition.

Senate amendment

The Senate amendment requires the ITC to make its injury determination within 150 days of petition.

Conference agreement

The Senate recedes with an amendment to authorize a 30-day extension in extraordinarily complicated cases. The conferees intend for the ITC not to extend the deadline if such extension would impair the ITC's ability to give sufficient consideration to remedy issues in the investigation. The ITC shall determine no later than 100 days after the filing of a petition that an investigation is extraordinarily complicated.

4. Factors Applied in Determining Injury

(a) Determination of "domestic industry"

Present law

In determining the domestic industry producing an article like or directly competitive with an imported article, the ITC:

(a) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production; and

(b) 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.

House bill

The House bill changes the "may" with respect to clauses (a) and (b) to "shall, to the extent such information is available."

Senate amendment

The Senate amendment changes the "may" with respect to clause (a) only to "shall."

Conference agreement

The House recedes with an amendment to add "to the extent such information is available."

(b) Factors to be considered with respect to serious injury

Present law

The ITC must take into account all factors which it considers relevant, including, but not limited to: the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry.

House bill

The House bill changes the second factor listed to: "the inability of a significant number of firms to operate domestic production facilities at a reasonable level of profit."

Senate amendment

The Senate amendment includes the same change to the second factor as the House bill.

Conference agreement

The conferees agreed to the change.

(c) Factors to be considered with respect to "threat of serious injury"

Present law

The ITC must take into account all factors which it considers relevant, including, but not limited to: a decline in sales, 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 concerned.

House bill

The House bill adds three additional factors: (1) a decrease in domestic market share; (2) the extent to which foreign exports are being diverted to the U.S. market by reason of trade restraints; and (3) the inability of domestic producers to generate adequate capital to finance modernization of plant and equipment

Senate amendment

The Senate amendment adds five additional factors: (1) a decline in domestic industry's market share; (2) the extent to which foreign exports are being diverted to the U.S. market by reason of trade restraints; (3) foreign export targeting; (4) existing preliminary or final antidumping or countervailing duty determinations; and (5) the extent to which domestic firms are unable to maintain existing levels of research and development expenditures.

Conference agreement

The Senate recedes with an amendment to add a fourth additional factor: (4) the extent to which domestic firms are unable to maintain existing levels of research and development expenditures.

(d) Factors not indicating absence of serious injury, or threat thereof

Present law

No provision.

House bill

No provision.

Senate amendment

Imports by domestic producers shall not be considered a factor indicating the absense of serious injury, or threat thereof.

Conference agreement

The Senate recedes.

(e) Causation standard

Present law

Present law requires that increased imports be a substantial cause of serious injury. "Substantial cause" is defined as a cause which is important and not less important than any other cause.

House bill

The House bill clarifies that the ITC should consider the condition of the industry over the course of the relevant business cycle and shall not aggregate the causes of declining demand associated with a recession or economic downturn into a single cause of serious injury.

Senate amendment

The Senate amendment includes the same provision as the House bill. The Senate amendment also requires the ITC to examine factors other than imports which may be a cause of serious injury, and to include such findings in its report.

Conference agreement

The House recedes.

(f) Seasonal imports

Present law

No provision.

House bill

In cases involving seasonal agricultural imports, the ITC may find serious injury if the increased imports are largely entering during a specific period or season of the year and are largely impacting only domestic producers harvesting or marketing during that period or season.

Senate amendment

No provision.

Conference agreement

The House recedes.

(g) GEOGRAPHICALLY ISOLATED MARKETS

Present law

No provision.

House bill

The House bill allows the ITC to disregard, in making its injury determination, quantities of imports into a "geographically isolated market" defined as a market in which:

(a) producers within the market have not supplied (or made a significant effort to meet) demand in that market to any substantial degree in the most recent representative period, and there is no reasonable likelihood that they will do so, and,

(b) producers outside the market have not historically met demand within the market at prices reasonably equivalent to prices prevailing elsewhere in the United States because of costs incurred to ship or sell in the market.

Senate amendment

No provision.

Conference agreement

The House recedes. The conferees believe that present law already authorizes the ITC to consider, in appropriate circumstances, whether imports enter certain geographical markets where the domestic industry does not compete in determining whether there is a substantial causal relationship between imports and serious injury to a domestic industry.

5. Provisional Relief for Perishable Products

(a) Procedure

Present law

No provision.

House bill

The House bill authorizes the USTR, at industry request, to direct ITC monitoring of imports of a perishable agricultural product for up to two years, if there is a reasonable indication that such industry is vulnerable to serious injury or threat thereof from increased imports. The USTR's determination on monitoring must be made within 21 days of a request.

If a petitioner under this chapter requests emergency relief with respect to a perishable agricultural product that has been monitored for at least 90 days, the ITC would make a preliminary determination regarding serious injury and the difficulty or repairing such injury because of perishability within 21 days of the petition. If the ITC makes an affirmative preliminary injury determination, it shall determine the import duty or restriction necessary to prevent or remedy such injury. In making its remedy recommendation, the ITC shall give preference to tariff increases.

If the ITC makes an affirmative preliminary injury finding, the USTR must grant provisional import relief within seven days unless it is determined to be not in the national economic interest.

Relief could be in any form of import relief or suspension of liquidation of entries and/or posting of bond or security deposit. Relief terminates if the ITC makes a negative final injury determination or the USTR denies any import relief at the end of the investigation, or the USTR decides relief is no longer warranted due to changed circumstances.

Senate amendment

The Senate amendment authorizes the petitioner for import relief regarding a perishable product also to file a petition with the Secretary of Agriculture for emergency relief. Within 14 days the Secretary shall advise the President and recommend emergency action if the Secretary has reason to believe that increased imports are a substantial cause of serious injury or threat thereof and that emergency action is warranted. If the Secretary recommends emergency action, within seven days the President must either proclaim import relief or publish notice of his decision not to take emergency action.

Relief could be tariffs, quotas, and/or tariff-rate quotas. Relief terminates if the ITC finds no serious injury, or the President denies import relief at the end of the investigation, or the President decides relief is no longer warranted due to changed circumstances.

Conference agreement

The Senate recedes with a substitute amendment authorizing the USTR to direct ITC monitoring of imports of perishable agricultural products for up to two years, if there is a reasonable indication that increasing imports are, or are likely to be, a substantial cause of serious injury or threat thereof to the domestic industry. The USTR must decide whether or not to direct monitoring within 21 days of a request by domestic industry.

If a domestic industry files a petition for import relief under section 201, and there has been at least 90 days of import monitoring, then the petitioner may request fast-track provisional relief. The data collected during monitoring would enable an expedited ITC preliminary injury determination and remedy recommendation within 21 days of the request for provisional relief.

Upon the request of the ITC, the USDA would be required to promptly provide the ITC with any relevant information it has which would assist the ITC in making such determination.

If the ITC makes an affirmative preliminary injury determination, it would recommend whatever import relief would prevent or remedy the injury, giving a preference to tariff increases. The ITC preliminary injury determination and provisional remedy recommendation would be submitted to the President, who would have seven days to take action, if warranted.

Provisional relief, if provided, would consist of immediate suspension of liquidation and tariff increases, quotas, or a combination thereof. If import relief in the form of tariffs is ultimately provided by the President, then unliquidated entries during the period of provisional relief shall be liquidated and duties collected at either the provisional level or the final level, whichever is lower. If import relief other than tariffs is ultimately provided, then the President may refund the provisional duties. If the provisional relief or final relief is in the form of a quantitative restriction, all entries during the period of provisional relief would count toward the quantitative restriction. If no import relief is provided by the final decision, then payment of any provisional duties shall be refunded, and entries liquidated. In deciding on provisional relief, the President shall give preference to tariffs over quotas.

Provisional relief shall terminate if (1) the ITC makes a negative final injury determination, (2) the President decides relief is no longer warranted due to changed circumstances, or (3) the President decides either to take action or not to take action after receiving an affirmative determination and report from the ITC.

(b) Definition of perishable product

Present law

No provision.

House bill

The House bill grants the USTR the authority to determine whether a product is a "perishable agricultural product" for purposes of fast-track monitoring and relief. The determination is to be based on the facts and circumstances for each product. Factors to consider include:

(1) short shelf life;

(2) short growing or marketing season;

(3) other legislative or administrative designation as perishable; and

(4) any other factors deemed relevant.

Senate amendment

No provision.

Conference agreement

The Senate recedes. The conferees agreed that perishability should be determined on the basis of the facts and circumstances in each case, taking into account all of the factors set forth under the House bill. One factor is not necessarily dispositive of an agricultural product's perishability. For example, the specific designation of a product, such as frozen concentrated orange juice, as perishable under the Caribbean Basin Initiative or the U.S.-Israel free trade area agreement should not be dispositive. Other factors regarding frozen concentrated orange juice—such as the facts that it can be stored for years without product degradation and is marketed year-round—indicate that it should not be considered a perishable agricultural product for purposes of this provision.

6. Provisional Import Relief if Critical Circumstances Exist

(a) Definition of critical circumstances

Present law

No provision.

House bill

Critical circumstances exist if a substantial increase (absolutely or relatively) in the quantity of an article being imported into the United States over a relatively short period of time has led to circumstances in which a delay in the taking effect of import relief would cause harm that would significantly impair the effectiveness of such import relief.

Senate amendment

Critical circumstances exist if a significant increase in imports (actual or relative to domestic production) over a short period of time has led to circumstances in which a delay in import relief would cause damage to the domestic industry that would be difficult to remedy at the time relief would normally be provided.

Conference agreement

The Senate recedes with an amendment clarifying that 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 chapter would cause harm that would significantly impair the effectiveness of such action.

In adopting this new provision, the conferees are recognizing that, in critical circumstances, provisional measures may be appropriate to ensure that the effectiveness of whatever actions are eventually taken is not impaired. The conferees recognize that, at the time the ITC is required to make its de-

termination regarding critical circumstances, it will not know what actions will eventually be taken by the President or be able to judge definitively the impact of a delay on their effectiveness. This should not result, however, in the ITC being unable to reach a determination as to whether or not critical circumstances exist. The ITC should seek to determine whether the substantial increase in imports is so disruptive as to undercut any import relief that may be provided and consequently that measures to prevent further damage to the domestic industry pending Presidential action are appropriate.

(b) Procedure

Present law

No provision.

House bill

If the petition alleges critical circumstances, and if the ITC finds serious injury, then the ITC must also determine (at the same time as its injury determination, which is within four months of the petition) whether critical circumstances exist. If the ITC finds critical circumstances, then it shall order immediate suspension of liquidation of all entries of the merchandise under investigation, and may order the posting of a bond or cash deposit. If the USTR finds, within seven days of the ITC determination of critical circumstances, that provisional import relief is not in the national economic interest despite the finding of critical circumstances, the USTR may order the suspension of liquidation to be withdrawn. Any import relief ultimately provided by the USTR must be retroactively applied to the date of initial suspension of liquidation. If the USTR decides not to provide import relief, then the suspension of liquidation shall be withdrawn.

Senate amendment

If, during the course of an investigation, the President finds that critical circumstances exist, the President shall impose provisional measures consisting of any actions otherwsie authorized under the escape clause (tariff increase, tariff-rate quota, quota, OMA, TAA, regulatory relief, multilateral negotiations, or any combination). Provisional relief would remain in effect until revoked by the President, the ITC makes a negative injury determination, or 90 days after an ITC affirmative injury determination.

Conference agreement

The Senate recedes with a substitute amendment authorizing a petitioner for action under section 201 to request, either in the petition or by amendment at any time up to 30 days prior to the date the ITC report is due, provisional import relief due to critical circumstances.

The cumulative impact of any import relief taken shall not exceed the amount necessary to prevent or remedy the serious injury, or threat thereof.

If the request for provisional relief is submitted at least 30 days prior to the ITC injury determination, then the ITC shall make a critical circumstances determination at the same time as its injury determination. If the request is after the date that is 30 days prior to the ITC's injury determination, then the ITC shall make a critical circumstances determination no later than its remedy recommendation.

If the ITC makes an affirmative critical circumstances determination, then it shall recommend whatever import relief is appropriate to address the critical circumstances. Within 7 days of receiving the ITC critical circumstances recommendation, the President must provide whatever action, if any, is appropriate to address the critical circumstances.

Provisional relief, if provided, shall consist of immediate suspension of liquidation, tariff increases, quotas, or a combination thereof. If import relief is provided by the President, then unliquidated entries during the period of provisional relief shall be liquidated and duties collected at either the provisional or the final level, whichever is lower. If import relief other than tariffs is ultimately provided, then the President may refund the provisional duties. If the provisional relief or final relief is in the form of a quantitative restriction, all entries during the period of provisional relief would count toward the quantitative restriction. If no import relief is provided by the final decision, then payment of any provisional duties shall be refunded, and entries liquidated. In deciding on provisional relief, the President shall given preference to tariffs over quotas.

Provisional relief shall terminate when the President takes action after receiving the ITC report.

7. ITC Remedy Recommendation

(a) Standard

Present law

If the ITC makes an affirmative injury determination, it must then find the amount of the increase in, or imposition of, any duty or import restriction on the article investigated which is necessary to prevent or remedy the serious injury found, or, if the ITC determines that trade adjustment assistance can effectively remedy such injury, the ITC recommends the provision of trade adjustment assistance.

House bill

The House bill provides that, if the ITC makes an affirmative injury determination, it shall determine what form and amount of import relief would be the most effective to prevent or remedy the serious injury and facilitate efforts by the domestic industry to enhance its long-term competitiveness or to adjust to import competition.

Senate amendment

The Senate amendment provides that, if the ITC make an affirmative injury determination, it shall recommend those actions (including, but not limited to, import relief), if any, that are likely to assist the domestic industry in making a positive adjustment to import competition, based on the ITC's evaluation of the adequacy of the adjustment plan or commitments.

The cumulative impact of any recommended actions, however, may not exceed the amount necessary to prevent or remedy the serious injury.

Conference agreement

The House recedes with a substitute amendment providing that, if the ITC makes an affirmative injury determination, it shall recommend the action that would address the injury and be the most effective in facilitating efforts by the domestic industry to make a positive adjustment to import competition.

The cumulative impact of any import relief recommended may not exceed the amount necessary to prevent or remedy the serious injury.

(e) Remedy options

Present law

The ITC is to find the amount of increase in, or imposition of, a duty or import restriction which is necessary to prevent the serious injury.

House bill

In determining the form and amount of import relief, the ITC may choose any of the following:

(a) tariff increase;
(b) tariff-rate quota;
(c) quantitative restriction;
(d) negotiation of orderly marketing agreements (OMA's); or
(e) any combination of the above.

Senate amendment

The Senate amendment authorizes the ITC to recommend any of the following:

(a) tariff increase;
(b) tariff-rate quota;
(c) quantitative restriction;
(d) certification of workers and firms as eligible for trade adjustment assistance;
(e) consideration of firms' applications for regulatory modifications;
(f) initiation of multilateral negotiations; or
(g) any combination of the above.

Conference agreement

If the ITC makes an affirmative injury determination, it shall recommend one or more of the following (a) through (d) actions which would address the injury and be the most effective in facilitating efforts by the domestic industry to make a positive adjustment to import competition:

(a) tariff increase;
(b) tariff-rate quota;
(c) quantitative restriction;
(d) adjustment measures, including trade adjustment assistance.

In addition to (a) through (d), the ITC remedy recommendation may include:

(e) international negotiations; or
(f) any other action authorized under current law which is likely to facilitate the positive adjustment of the domestic industry.

The term "adjustment measures" refers to any existing authority to provide adjustment assistance, such as community assistance programs or manpower programs, not only trade adjustment assistance. In this context, the remedy of trade adjustment assistance means benefits other than those to which workers are already entitled under chapter 2 of the Trade Act of 1974, as amended.

(d) Factors to consider

Present law

No provision.

House bill

The House bill provides that, in determining the form and amount of import relief, the ITC shall consider each of the following factors, and report on each of them in its report:

(a) the extent to which import relief in conjunction with actions by the domestic industry (as identified in the statement on proposed adjustment measures and in individual confidential submissions to the ITC) are likely to enhance the long-term competitiveness of the domestic industry or otherwise facilitate adjustment;

(b) the current competitive position of the domestic industry in U.S. and world markets;

(c) the trends in conditions of competition (U.S. and global) that are likely to continue in this sector; and

(d) the role of this particular industry in the national economy, including its importance to U.S. national economic security.

Senate amendment

The Senate amendment requires the ITC to hold a public hearing on remedy recommendations, and to take into account, in making its remedy recommendations:

(a) the objectives and actions, including the nature and extent of import relief, specified in the adjustment plan; and

(b) any confidential commitments obtained by the ITC from any person regarding their individual efforts to promote positive adjustment.

In determining whether to recommend actions other than import relief, the ITC must take into account the likelihood that the objective of the actions can be attained.

Conference agreement

The House recedes with a substitute amendment providing that, after its injury detemination, the ITC must hold a public hearing on the remedy issue. In making its remedy recommendation, the ITC must take into account each of the following factors:

(a) the form and amount of import relief that would prevent or remedy the serious injury;

(b) the objectives and actions, including the action that the petitioner requests be taken by the President, specified in the adjustment plan;

(c) commitments obtained by the ITC from any person regarding their individual efforts to promote positive adjustment;

(d) any information available to the ITC concerning the conditions of competition in domestic and world markets in this industry, and likely developments in the period for which section 201 action is being requested; and

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

If the ITC recommends actions other than import relief, it should make a good faith effort to recommend such actions only if there is a realistic prospect that the objective of such actions can be attained.

(b) Participating commissioners

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides that only those members of the ITC who agreed with the majority's affirmative injury determination are allowed to vote on the action that the ITC shall recommend.

Conference agreement

the House recedes with an amendment clarifying that Commissioners who vote negative on injury may submit separate views on the appropriate remedy, but that such views will not be included in determining the majority ITC recommendation.

8. ITC Report

(a) Deadline

Present law

The ITC must report to the President on its finding and determinations at the earliest practicable time, but not later than six months after filing of the petition. There are no separate deadlines for the injury determination and the remedy recommendation.

House bill

The House bill requires the ITC to make a determination on remedy and report to the President within 60 days of its injury determination (within 180 days of petition).

Senate amendment

The Senate amendment requires the ITC to report its injury determination and remedy recommendation to the President within 180 days of filing of a petition.

Conference agreement

The House recedes.

(b) Contents of report

Present law

Within six months of initiation, the ITC must report to the President on its injury determination, the basis therefor, and any separate or dissenting views. If the determination is affirmative, the ITC shall include in the report its findings regarding the import relief necessary to prevent or remedy such injury or, if it determines that TAA can effectively remedy such injury, a recommendation to provide such assistance.

House bill

The House bill requires the ITC to report to the USTR, rather than the President. It also requires the ITC report to include:

(a) its injury and import relief determinations, and any dissenting or separate views regarding both, determinations;

(b) a detailed statement regarding the factors that the ITC must consider in determining the form and amount of relief it recommends;

(c) an estimate of (i) the recommended import relief's effects (costs and/or benefits) on consumers of the imports and of the product generally and on other sectors of the U.S. economy, and (ii) the economic or social costs or benefits to taxpayers, communities, and workers which would likely result if import relief were or were not provided; and

(d) information obtained by the ITC regarding actions or proposed actions by firms or workers to enhance competitiveness or adjust to import competition.

Senate amendment

The Senate amendment requires the ITC to include in its report to the President its injury determination and remedy recommendation and basis therefor, any dissenting or separate views, and a description of the short- and long-term effects the recommended remedy is likely to have on other domestic industries and consumers.

The Senate amendment also authorizes the ITC to submit to the President any findings or conclusions relevant to whether a merger or acquisition by firms in the domestic industry would assist the industry in making a positive adjustment, including: (a) the extent of foreign competition relevant to a determination of a competitive effect of a merger or acquisition; (b) the degree to which a merger or acquisition is likely to assist positive adjustment by reducing costs, promoting efficiency, or increasing sales; and (c) the effect on domestic competition and commerce.

Conference agreement

The House recedes with a substitute amendment providing that the ITC shall include in its report to the President its injury determination, the action it is recommending, the basis for its determination and recommendation, and any separate or dissenting views. The report shall also include a description of:

(1) the short- and long-term effects the recommended action is likely to have on the petitioning industry, on other domestic industries, and on consumers;

(2) the short- and long-term effects of not taking the recommended action on the petitioning industry, its workers and the communities where it is located and on other domestic industries; and

(3) information obtained by the ITC regarding steps that firms and workers are taking or plan to take to make a positive adjustment to import competition, and any plan or commitments submitted to the ITC.

The conferees intend for the ITC to base its analyses of these effects on information generally available to the ITC as well as information submitted to the ITC during the course of the investigation. The conferees do not intend for the ITC to investigate each effect through the dissemination of additional questionnaires.

9. Trade Adjustment Assistance (TAA)

Present law

If the ITC determines that the provision of TAA can effectively remedy the injury and thus recommends TAA instead of import relief, then the President is required to direct the Secretaries of Labor and Commerce to expedite consideration of petitions for TAA.

House bill

The House bill provides that, if the ITC makes an affirmative injury determination, workers and firms within the injured industry would be automatically certified as eligible for benefits under the worker and firm TAA program. (Individual workers and firms would still have to request certification and apply to receive benefits, however.) Automatic eligibility for TAA would last for three years from the date of the ITC's serious injury determination.

Senate amendment

The Senate amendment provides that, if the ITC recommends TAA, the President shall direct the Secretaries of Labor and Commerce, within 30 days, to certify automatically workers and firms within the injured industry as eligible for TAA.

Conference agreement

The House recedes with a substitute amendment providing that, if the ITC makes an affirmative injury determination, the Secretaries of Labor and Commerce shall give expedited consideration to petitions from workers and firms in the injured industry for certification of eligibility for TAA benefits.

10. Subsequent Investigations

Present law

No investigation shall be made with respect to the same subject matter:

(a) for two years from the last day of import relief, concerning a subject for which import relief was provided; or

(b) for one year from the ITC's report to the President in a previous investigation.

House bill

The House bill retains present law.

Senate amendment

The Senate amendment prohibits an investigation with respect to any domestic industry previously investigated if such prior investigation resulted in import relief, for a period of time equal to the period of relief granted. With respect to any other industry previously investigated, the Senate amendment retains present law.

Conference agreement

The House recedes.

c. Administration action on ITC recommendations

1. Transfer of authority from the President to the USTR

Present law

Within 60 days of receiving an affirmative determination from the ITC, the President must decide on import relief.

House bill

The House bill transfers the authority to provide import relief from the President to the USTR.

Senate amendment

The Senate amendment retains present law.

Conference agreement

The House recedes.

2. Standard

Present law

Within 60 days of receiving an affirmative determination from the ITC, the President must provide import relief, unless he determines that relief is not in the national economic interest. If the President determines to provide import relief, he shall provide such relief to the extent that, and for such time as, he determines necessary to prevent or remedy the serious injury and to facilitate the orderly adjustment to new competitive conditions.

House bill

The House bill provides that, within 30 days of receiving an affirmative determination from the ITC (60 days in extraordinarily complicated cases), the USTR must decide either (1) to provide import relief to the extent that, and for such time as, the USTR determines necessary to prevent or remedy the serious injury and to enhance competitiveness or otherwise facilitate adjustment, or (2) not to provide import relief because:

(a) the provision of any import relief would threaten our national security; or

(b) the economic costs of providing any import relief are so great that they outweigh the economic and social benefits of providing import relief.

Senate amendment

The Senate amendment provides that, within 60 days of receiving an affirmative determination from the ITC, the President must take the actions recommended by the ITC, or substantially equivalent actions, unless the President determines that such action:

(a) would endanger U.S. national security;

(b) would disproportionately burden U.S. agriculture with regard to exports, employment, or income;

(c) would result in a loss of jobs greater than the number of jobs preserved or created;

(d) would be a substantial cause of serious injury to any domestic industry that consumes any product of the import-impacted industry; and

(e) would disproportionately burden the poor.

Conference agreement

The conferees agreed to a substitute amendment providing that, within 60 days of receiving an affirmative determination from the ITC, the President shall take all appropriate and feasible action within his power that he determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and will provide greater economic and social benefits than costs.

The conferees believe that in the vast majority of cases there will be some appropriate and feasible action for the President to take. The conferees recognize, however, that there may be certain circumstances in which there is no action that is appropriate and feasible. For example, there may be certain exceptional circumstances when any action that would facilitate adjsutment would result in greater economic and social costs than benefits. If there is such a case, the President should not be forced into taking action. However, the conferees strongly believe that this type of situation will be the exception, not the general rule.

3. Interagency consultation

Present law

Section 242 of the Trade Expansion Act of 1962 requires the interagency organization established thereunder (the Trade Policy Committee (TPC)) to make recommendations to the President regarding his determinations.

House bill

No provision.

Senate amendment

The Senate amendment requires the President to consult with the TPC and to consider its recommendations with regard to his determinations.

Conference agreement

The conferees agreed to retain the requirement under present law.

4. Factors to consider

Present law

In determining whether to provide relief, and what form and amount of relief, the President is required to take the following factors into account:

(a) the extent to which workers are benefitting from adjustment assistance and other manpower programs;

(b) the extent to which firms are benefitting from adjustment assistance;

(c) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry to adjust to import competition, and other considerations relative to the position of the industry in the U.S. economy;

(d) the effect of import relief on consumers and on competition in the domestic market for such articles;

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

(f) the impact on U.S. industries and firms as a result of international obligations regarding compensation;

(g) the geographic concentration of imports;

(h) the extent to which there is diversion of foreign exports to the U.S. market by reason of foreign restraints; and

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

House bill

The House bill requires the USTR to consider the same factors, plus it adds as additional factors:

those factors the ITC is required to consider in making its remedy recommendation, including any statement on proposed adjustment measures and any confidential submissions;

the likely impact of import relief on agricultural exports;

the presence of any geographically isolated markets;

the seasonal nature of imports (if a seasonal agricultural product is involved).

The USTR must give weight to the estimates of economic costs and benefits provided by the ITC in its report.

Senate amendment

The Senate amendment requires the President, in deciding on actions substantially equivalent, or in addition, to the ITC recommendation, to consider existing factors (a), (b), (c), and (d), plus it adds as additional factors:

the adjustment plan and any confidential commitments regarding positive adjustment;

the efforts of firms to provide retraining to workers;

the potential for circumvention of any relief action.

Conference agreement

The Senate recedes with a substitute amendment providing that, in determining what action to take, the President shall take into account:

(a) the recommendations and report of the ITC;

(b) the extent to which workers and firms are benefitting from adjustment assistance and other manpower programs and engaged in worker retraining efforts;

(c) the efforts being made, or to be implemented, by the domestic industry (including any plan or commitments submitted to the ITC) to make a positive adjustment;

(d) the probable effectiveness of import relief and other actions within the authority of the President as means to promote positive adjustment;

(e) the short- and long-term economic and social costs of actions that could be taken relative to the short- and long-term economic and social benefits of such actions and other considerations relative to the position of the domestic industry in the U.S. economy;

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

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

(2) the effect of actions on consumers and on competition in domestic markets for such articles; and

(3) the impact on U.S. industries and firms as a result of international obligations regarding compensation;

(g) the extent to which there is diversion of foreign exports to the U.S. market by reason of foreign restraints;

(h) the potential for circumvention of any action taken;

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

(j) other factors required to be considered by the ITC.

5. Remedy Options

Present law

If the President provides import relief, he may:

(a) proclaim an increase in, or imposition of, a duty;

(b) proclaim a tariff-rate quota;

(c) proclaim a modification of, or an imposition of, a quantitative restriction;

(d) negotiate, conclude, and carry out OMA's; or

(e) take any combination of such actions.

The President may also direct the Secretaries of Labor and Commerce to give expeditious consideration to applications for adjustment assistance by firms and workers. If the ITC recommends adjustment assistance, however, the President must direct such.

House bill

The House bill retains present law and also authorizes USTR to initiate international negotiations to address the underlying cause of the particular import problem.

Senate amendment

The Senate amendment retains present law with regard to import relief options. In addition to the actions recommended by the ITC, the Senate amendment also authorizes the President to take the following actions:

(a) direct the Secretaries of Labor and Commerce to certify workers and firms in the injured industry as eligible for adjustment assistance;

(b) direct the head of any Executive Branch department or agency to review applications from firms in the industry to modify any Federal regulatory requirement;

(c) Initiate multilateral negotiations to address conditions susceptible to multilateral approaches, such as global oversupply, diversion, or imports due to government targeting; or

(d) take any combination of the above actions.

The President may also request the Attorney General or Federal Trade Commission to consider the ITC report, findings, and conclusions with respect to the effects of mergers or acquisitions in promoting positive adjustment, in considering antitrust enforcement actions.

Conference agreement

The Senate recedes with a substitute amendment providing that the actions which the President may take include the following:

(a) tariff increase;
(b) tariff-rate quota;
(c) quantitative restriction;
(d) auctioned quotas;
(e) OMA;
(f) international negotiations to address the underlying cause of the increase in imports or otherwise alleviate the injury;
(g) adjustment measures, including trade adjustment assistance (other than entitlements);
(h) legislative proposals;
(i) any other action within his power;
(j) any combination of the above.

The cumulative impact of any import relief taken shall not exceed the amount necessary to prevent or remedy the serious injury, or threat thereof.

The term "adjustment measures" refers not only to trade adjustment assistance, but to any existing authority to provide adjustment assistance, such as community assistance programs or manpower programs. If the President decides to take action to implement adjustment measures, the conferees intend that such action lead to benefits for workers other than those to which they are already entitled under chapter 2 of the Trade Act of 1974, as amended (including amendments under this Act).

6. Auctioned Quotas

(Sec. 202 of the Senate amendment)

Present law

Section 1102 of the Trade Agreements Act of 1979 authorizes the President to sell import licenses at public auction under such terms and conditions as he deems appropriate. Such authority may be used to administer quantitiative restrictions imposed under specified statutes, including section 203 of the Trade Act of 1974.

House bill

The House bill adds a provision that, if the ITC recommends a quantitative restriction in any import relief proceeding, such recommendation shall be to administer the quantitative restriction by auction of import licenses, unless the ITC determines that such action would have undesirable economic results.

Senate amendment

The Senate amendment adds a provision requiring the Secretary of the Treasury to administer each of the next three quantitative restrictions or OMA's imposed under the escape clause, by means of public auction of import licenses, unless the President determines that: (1) the costs would exceed any revenues from the auction; (2) such auction would result in retaliation against a substantial amount of U.S. exports; or (3) it cannot be administrated without some person obtaining undue market power.

The Senate amendment also requires the Secretary of the Treasury to prescribe regulations within 60 days of enactment providing for the public auction of import licenses.

Conference agreement

The Senate recedes with a substitute amendment to add auctioned quotas to the list of the President's remedy options.

7. Procedure for Regulatory Modifications

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides that, if the President directs consideration of such applications, any firm within the domestic industry may submit an application to modify any Federal regulatory requirement to the head of any designated department or agency. If so directed, the head of the department or agency shall conduct an expedited review of the regulatory requirement, and determines whether the firm is within the injured industry. If so, the head of the department or agency may take any appropriate action within the scope of its authority, and recommend appropriate Presidential or legislative action.

Conference agreement

The Senate recedes.

8. Report to Congress

Present law

On the day the President determines whether to provide import relief, he must transmit to Congress a document setting forth his action and reasons therefor, including the reasons for any difference from the ITC recommendation.

House bill

The House bill imposes requirements similar to present law on the USTR. If USTR's decision on import relief differs in either form or amount from the ITC recommendation, it must submit, along with its decision, a detailed explanation for such difference. Such explanation must account for how any relief provided facilitates efforts by the domestic industry to enhance its long-term competitiveness.

Senate amendment

The Senate amendment requires the President's report to Congress also to include any recommendations for legislation which would assist the domestic industry in making a positive adjustment to imports.

Conference agreement

The conferees agreed to merge the House and Senate provisions.

9. Duration of relief

Present law

The President shall provide import relief for such time (not to exceed five years) as he determines necessary to prevent or remedy serious injury and facilitate the industry's orderly adjustment to new competitive conditions.

Relief may be extended by the President for an additional three years, if, after taking into account advice from the ITC, he determines such extension to be in the national interest.

House bill

The House bill retains present law (transferring authority to the USTR).

Senate amendment

The Senate amendment provides action for the period of time (not to exceed 10 years) that is likely to assist the industry in making a positive adjustment to import competition.

Conference agreement

The House recedes with an amendment to limit action to a maximum of 8 years and authorizing an extension of action if the President's initial action is for less than 8 years, provided that the total period of action not exceed 8 years.

d. Monitoring and modification authority

1. Monitoring and Periodic Review by the ITC

Present law

So long as any import relief remains in effect, the ITC is required to keep under review developments with respect to the industry concerned, including the progress and efforts made by firms in the industry to adjust to import competition. Upon the request of the President, the ITC shall make reports to the President concerning such developments.

Upon request of the President or upon its own motion, the ITC shall advise the President of its judgment regarding the probable economic effect on the domestic industry of any modification of import relief provided.

House bill

The House bill retains present law with an amendment to require the ITC to submit an annual report to USTR and Congress on the review and to monitor progress and efforts by firms to enhance competitiveness as well as to adjust to import competition.

Senate amendment

The Senate amendment requires the ITC to monitor developments with respect to the domestic industry concerned, including the progress and efforts of workers and firms to make a positive adjustment to import competition.

At intervals determined by the President (but no earlier than three years after action is taken and not more than once every three years thereafter), the ITC is required to submit a report to the President on its monitoring of the domestic industry. The ITC shall hold a hearing in the course of preparing each such report.

Conference agreement

The House recedes with an amendment requiring the ITC to report biannually to

the President and Congress on its review of developments in the domestic industry and providing that, upon request of the President, the ITC shall advise the President of its judgment regarding the probable economic effect on the domestic industry of any proposed extension, reduction, modification or termination of actions taken.

2. Modification/Termination of Relief

Present law

The President may extend import relief beyond the five-year limit at a level no greater than the level in effect at the time of extension. There can be only one extension of relief, to last for up to three additional years.

The President may reduce or terminate import relief if he determines that such reduction or termination is in the national economic interest.

House bill

The House bill retains present law and adds a new provision which authorizes the ITC, either on its own motion or upon request from an interested party, to recommend modifications in either the form or amount of relief (or both) when appropriate—

(a) to compensate for changes in currency exchange rates;

(b) to prevent or respond to attempts to circumvent the import relief measures;

(c) to ensure the effectiveness of the import relief in providing adequate opportunity for adjustment;

(d) to account for changed circumstances in the domestic economy;

(e) to account for actions taken or not taken by the domestic industry to adjust and become more competitive.

Any recommendation by the ITC to modify import relief would be forwarded to the USTR, and the USTR would have 21 days to determine whether to order such modification.

Senate amendment

The Senate amendment provides that, subsequent to receiving an ITC monitoring report, the President may reduce, modify (but not increase), or terminate any action taken if either (1) the President determines that the domestic industry has not made an adequate effort to make a positive adjustment to import competition, or (2) a majority of representatives of the domestic industry request such reduction, modification, or termination on the basis that the domestic industry has made a positive adjustment to import competition.

Conference agreement

The House recedes with a substitute amendment providing that, subsequent to receiving the first ITC monitoring report (or ITC advice thereafter), the President may reduce, modify or terminate any action taken if either:

(1) the President determines, either by request or on his own motion, that changed circumstances warrant such reduction, modification or termination; or

(2) a majority of representatives of the domestic industry request such reduction, modification or termination on the basis that the domestic industry has made a positive adjustment to import competition.

Changed circumstances may include a finding that the domestic industry has not made adequate efforts to make a positive adjustment, or a determination that the effectiveness of the action taken has been impaired by changed economic circumstances (such as substantial shifts in currency exchange rates or attempts to circumvent the action taken).

3. Enforcement

Present law

Present law requires the President to provide, by regulations, for the efficient and fair administration of any action taken.

House bill

The House bill retains present law (transferring to the USTR).

Senate amendment

The Senate amendment retains present law, plus grants the President the authority to take such additional actions as may be necessary to eliminate any circumvention of actions taken.

Conference agreement

The House recedes.

4. Evaluation of Action After Expiration

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the ITC to evaluate the effectiveness of the action taken under this chapter after its termination, including holding a hearing, and report to the President and the Congress within six months of such termination on the evaluation.

Conference agreement

The House recedes.

e. Effective Date

House bill

Amendments shall apply to all petitions filed on or after date of enactment. Any pending investigation with respect to which the ITC has not made an injury determination on the date of enactment may be withdrawn and refiled without prejudice.

Senate amendment

Amendments apply to any investigation initiated after date of enactment.

Conference agreement

The Senate recedes.

PART 2—MARKET DISRUPTION

MARKET DISRUPTION (AMENDMENTS TO SECTION 406 OF THE TRADE ACT OF 1974)

(Sec. 135 of House bill; Sec. 1411 of Conference Agreement)

1. Transfer of authority

Present law

Section 406 of the Trade Act of 1974 authorizes the President to provide temporary import relief if imports of a particular product from a particular Communist country are causing market disruption.

House bill

The House bill transfers the authority to take action to the U.S. Trade Representative.

Senate amendment

No provision.

Conference agreement

The House recedes.

2. Eligible countries

Present law

Action may be taken under section 406 with respect to imports from a Communist country, defined as "any country dominated or controlled by communism."

House bill"

The House bill replaces the term "Communist country" with the term "non-market economy country," which is defined as "any country in which the government seeks to determine economic activity through central planning rather than reliance on market forces to allocate productive resources."

Senate amendment

No provision.

Conference agreement

The House recedes.

3. Standard for determining market disruption

Present law

Market disruption exists when imports of an article, like or directly competitive with an article produced by a 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.

House bill

The House bill amends the standard for determining market disruption to "whether an article is being imported into the U.S. in such increased quantities (either absolutely or relatively) as to be an important cause of material injury," thereby deleting the requirement that imports be increasing "rapidly," and lowering the causation test from "significant" cause to "important" cause.

Senate amendment

No provision.

Conference agreement

The Senate recedes with a substitute amendment clarifying the terms "rapidly" and "significant cause" under the current law standard. The amendment provides that 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. The amendment also defines "significant cause" as 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.

The conferees are concerned that the ITC has taken an unduly restrictive approach to the "rapidly increasing" and "significant cause" requirements under section 406. These amendments therefore clarify current law, in a manner consistent with U.S. obligations under GATT accession protocols and bilateral agreements.

Section 406 is designed to deal with surges in imports from nonmarket economy countries. In applying the term "rapidly", the ITC should examine whether imports have recently surged over historical levels. In conducting this inquiry, the ITC should balance the amount of the increase and the period of time involved. Thus, if the ITC finds that the increase is concentrated in a single year, it should look for a relatively sharp increase. If, on the other hand, the increase has occurred over a 2-3 year period, the longer period will provide a more stable basis for comparison and may show a steady trend toward higher import levels that meets the "rapidly increasing" requirement. Thus, in the latter situation, the increase need not be as sharp or as dramatic as that required over a shorter period. If imports have fluctuated up and down, the fact that imports are on a rapid upswing can satisfy the "rapidly increasing" requirement, even though imports have not reached levels at-

tained in a previous period. If, however, the ITC finds that imports are stable, declining in absolute terms and relative to domestic production, or increasing slowly, the "rapidly increasing" requirement would not be met.

The "significant cause" standard is an interim standard between the "substantial cause" requirement of section 201 and the "contributing cause" standard of the antidumping and countervailing duty laws. Because section 406 focuses on imports from a single country, rather than all imports, it would not be appropriate to require that imports be the substantial or primary cause of injury, since this standard would be very difficult to meet. Consequently, the ITC should examine the various injury factors to determine whether imports from a Communist country have contributed significantly to the injury.

Under this standard, the imports subject to investigation need not be the leading or most important cause of injury or more important than (or even equal to) any other cause, so long as a direct and significant causal link exists. Thus, if the ITC finds that there are several causes of the material injury, it should seek to determine whether the imports subject to investigation are a significant contributing cause of the injury or are such a subordinate, subsidiary or unimportant cause as to eliminate a direct and significant causal relationship. Obviously, this analysis cannot be conducted with mathematical precision, but will require the application of reasoned judgment by the ITC.

4. Factors to be considered in evaluating market disruption

Present law

No provision.

House bill

The House bill requires the ITC to consider, among other factors:

(i) the volume of imports;

(ii) the effect of imports on prices in the U.S. for like products;

(iii) the impact of imports on domestic producers of like products; and

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

Senate amendment

No provision.

Conference agreement

The Senate recedes.

5. Cumulation

Present law

No provision.

House bill

In determining whether market disruption exists, the ITC shall, where appropriate, cumulate imports from 2 or more nonmarket economy countries subject to investigation under this section.

Senate amendment

No provision.

Conference agreement

The House recedes.

6. Remedy

Present law

Upon a finding of market disruption, the ITC shall recommend such duty increase or other import restriction which is necessary to prevent or remedy the market disruption.

House bill

The House bill also authorizes the ITC to recommend a variable tariff based on the average of (1) average U.S. producer prices and (2) average import prices.

Senate amendment

No provision.

Conference agreement

The House recedes.

7. Discretion of administering authority

Present law

If the ITC finds market disruption, the President must provide import relief unless he determines that such relief is not in the national economic interest.

House bill

If the ITC finds market disruption, the U.S. Trade Representative can deny import relief only if the provision of such relief would have a serious negative impact on the domestic economy.

Senate amendment

No provision.

Conference agreement

The House recedes.

8. Effective date

Present law

No provision.

House bill

The House bill postpones the effective date of these amendments with respect to any country with whom the United States has, on date of enactment, conflicting obligations under an international agreement, until the date on which such agreement is due to expire. With respect to all other countries, the provisions are effective for investigations initiated after date of enactment.

Senate amendment

No provision.

Conference agreement

The Senate recedes with a substitute amendment providing that these provisions shall be effective for investigations initiated after date of enactment.

PART 3—TRADE ADJUSTMENT ASSISTANCE (TAA)

Eligibility of Workers and Firms for Trade Adjustment Assistance (sec. 211 of Senate amendment; sec. 1421 of conference agreement)

Present law

The Secretary of Labor certifies a group of workers (including agricultural workers) as eligible to apply for adjustment assistance if he determines that—

a. a significant number or proportion of the workers in a firm (or subdivision of the firm) have been, or are threatened to be, totally or partially separated;

b. sales and/or production of such firm or subdivision have decreased absolutely; and

c. increases of imports of articles like or directly competitive with articles produced by such workers' firm or subdivision contributed importantly to the separation, or threat thereof, and to the decline in sales and/or production.

The Secretary of Commerce certifies a firm (including any agricultural firm) as eligible to apply for adjustment assistance if he determines that:

a. a significant number or proportion of the workers in such firm have been, or are threatened to be, totally or partially separated;

b. sales and/or production of such firm (or of articles that accounted for at least 25 percent of such firm's sales or production during the 12 months prior to the most recent 12 months) have decreased absolutely; and

c. increases of imports of articles like or directly competitive with articles produced by such firm contributed importantly to the separation, or threat thereof, and to the decline in sales and/or production.

a. Oil and gas workers and firms

House bill

No provision.

Senate amendment

The Senate amendment expands eligibility to all workers and firms in the oil and natural gas industry (exploration to refining) and to workers and firms who supply essential goods or essential services as their principal trade or business to firms in the oil or natural gas industry.

Effective date: Date of enactment; also applies to workers laid off after September 30, 1985, covered by a certified petition filed within 90 days after enactment.

Conference agreement

The House recedes, with a substitute amendment to extend eligibility to workers and firms engaged in exploration and drilling in the oil and gas industry.

The House recedes on the effective date.

The purpose of this amendment is to facilitate the availability of benefits under the trade adjustment assistance program for workers employed by firms engaged in exploration or drilling for crude oil or natural gas. Under present law, workers employed by such firms have been denied program benefits because they are not considered to be employed by firms that produce articles that are like or directly competitive with increased imports. However, under present law, workers engaged in exploration or drilling for firms that also produce crude oil or natural gas are considered as eligible to apply for such benefits.

The conferees intend that workers employed by independent firms engaged in exploration or drilling be eligible to apply for program benefits on the same basis as workers employed by firms that are engaged in the production of crude oil or natural gas as well as exploration or drilling. Thus, a group of workers in a firm engaged in exploration or drilling could be certified as eligible for program benefits if the Secretary of Labor determined that increased imports of crude oil or natural gas contributed importantly to their unemployment and to a decline in sales by such firms (providing that the other requirements under the law for certification were met).

The conferees do not intend that certification of workers from independent firms engaged in exploration or drilling serve as a basis for certifying workers from producing firms to which such exploration or drilling workers provide services if such production workers have not petitioned for such certification.

Because exploration, drilling, and production activities in the crude oil and natural gas industries are inextricably linked, the amendment provides that workers engaged in exploration, drilling, or production of either crude oil or natural gas shall be considered as producing either product. Typically, the imports that have had an adverse impact on these workers in recent years are of crude oil.

For the purposes of this amendment, the conferees consider firms engaged in exploration or drilling to include, for example, independent drillers, pumpers, seismic and geo-

physical crews, geological crews, and mud companies.

b. Secondary workers and firms

House bill

No provision.

Senate amendment

The Senate amendment expands eligibility to otherwise qualified workers in firms that supply essential goods (parts, materials, or components) or essential services to directly affected firms for their production of articles like or directly competitive with increased imports, i.e., secondary workers.

The Senate amendment also expands eligibility to otherwise eligible firms that supply essential goods or essential services to directly affected firms for their production of articles like or directly competitive with increased imports.

Effective date: Three years after date of enactment or 1 year plus 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Conference agreement

The House recedes, with an amendment to make the eligibility expansion to secondary workers and firms effective one year after the imposition of an import fee to fund the TAA programs.

The conferees recognize that the amendment will broaden program coverage by making eligible for benefits firms, and workers in firms, providing essential goods or services to firms that produce articles that are like or directly competitive with increased imports. The conferees intend such broadening only to reach to firms directly supplying firms that are impacted by increased imports, i.e., the first tier of firms providing such goods or services, not to suppliers of suppliers, unless they otherwise qualify for eligibility. The particular goods or services should be essential, or integral, to the production of the end product.

The amendment would permit firms, and workers in such firms, providing essential goods or services to be certified for program benefits whether or not the firm producing the directly competitive article had applied for or received such certification. The conferees do not intend that certification of a firm, or workers in a firm, providing such essential goods or services automatically result in certification of firms, or workers in firms, producing the directly competitive product.

Cash Assistance for Workers

a. Training participation requirement (sec. 142 of House bill; sec. 213 of Senate amendment; sec. 1423 of conference agreement)

Present law

Workers must be enrolled in or have completed an approved job search program, if available, to receive up to 52 weeks of basic TRA benefits (less weeks of UI payments).

House bill

The House bill requires a worker to be enrolled in or have completed an approved training program in order to receive basic TRA if there is no reasonable prospect that the worker will be reemployed by the firm that laid him off (plant closing), unless the Secretary of Labor determines it is not feasible or appropriate to approve training. No TRA may be paid if the Secretary determines such worker is not enrolled or has ceased to participate in approved training for no justifiable cause, until the worker enrolls in or resumes such training. Job search requirements under present law apply as a condition for basic TRA if the worker's plant did not close permanently (training is required for the additional 26 weeks of TRA provided under present law).

Senate amendment

The Senate amendment replaces the job search requirement by a requirement that any worker be enrolled in or have completed an approved training program to receive any TRA, unless the Secretary of Labor certifies to the worker that such training is not feasible or appropriate. The Secretary must submit an annual report to the Senate Finance and House Ways and Means Committees on the number of certifications. No TRA may be paid to a worker if the Secretary of Labor determines that such worker has failed to begin, or has ceased to participate in, such training program for no justifiable cause, until the worker begins or resumes approved training.

Effective date: Three years after date of enactment or 1 year plus 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Conference agreement

The House recedes on the training requirement, with an amendment clarifying that this requirement does not apply to TRA benefits for any weeks of unemployment that begin more than 60 days after the petition is filed and prior to the date of certification. The conferees do not intend to penalize workers from receiving the limited number of weeks of TRA benefits that they would otherwise be entitled to receive because of such delays, inability of the Secretary to approve training for such weeks. Such workers would, however, be required to enter training in order to receive TRA benefits for weeks of unemployment occurring after their certification. The conferees intend that, among other criteria, training is not necessarily "appropriate" if there is a reasonable prospect that the particular worker will be reemployed by the firm from which he was separated (e.g., the plant did not close), and training would no longer be "feasible" if expenditures reached the training entitlement "cap" in a particular year.

The Senate recedes on the effective date, with an amendment to be effective 90 days after enactment.

b. Supplemental wage allowance (sec. 141 of House bill; sec. 1423(d) of conference agreement)

Present law

Eligible workers are entitled to a weekly trade readjustment allowance (TRA) cash payment equal to their most recent weekly unemployment insurance (UI) benefit, payable after UI eligibility expires. UI and basic TRA payments combined are limited to a maximum of 52 weeks combined (normally 26 weeks of UI plus 26 weeks of TRA). An additional 26 weeks of TRA may be paid to workers enrolled in an approved training program (weeks 52 to maximum 78).

House bill

The House bill provides a worker qualified for TRA who takes a new full-time job paying less than his previous job the option to collect up to 50 percent of his weekly TRA as a supplemental wage allowance, limited to an amount which raises his new wage up to 80 percent of his previous wage. The supplemental wage may be collected for the first 52 weeks after UI benefits expire or after the worker begins the new job while still eligible for UI, reduced by any amount of TRA already collected.

Effective date: Workers covered by petitions filed on or after date of enactment.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment that requires the Department of Labor to establish one or more demonstration projects in fiscal years 1989 and 1990 to determine the attractiveness and effectiveness of a supplemental wage allowance as an option for workers qualified for TRA who take a new full-time job paying less than their previous job, and two submit a report to the Congress within 3 years evaluating the results and making recommendations.

c. Determination of separation from employment (sec. 215 of Senate amendment; sec. 1425 of conference agreement)

Present law

An eligible worker may receive TRA cash benefits for up to 52 weeks (UI and TRA combined) of unemployment following a layoff occurring on or after the date specified in the certification that layoffs began or were threatened to begin (the "impact date"). Department of Labor regulations interpret the eligibility period as beginning on the date the worker was first separated from employment after the "impact date" and before or within the worker's first UI benefit period. TRA basic benefits may be collected only during the 104-week period following exhaustion of regular UI.

A certification does not apply to any worker whose last lay off before application for benefits occurred more than one year prior to the filing date of the petition.

Benefit payments may be made for layoffs which occur within 2 years after the certification date.

House bill

No provision.

Senate amendment

The Senate amendment specifies that the most recent separation from employment shall be used for determining the beginning of a worker's eligibility period, and waives certain existing time limits for workers otherwise eligible to receive benefits, who were separated from employment between August 13, 1981 (effective date of 1981 Budget Reconciliation Act), and April 7, 1986 (effective date of 1985 Budget Reconciliation Act), if they are enrolled or had participated in approved training or if the Secretary certified such training was not feasible or appropriate.

The Senate amendment also waives the time limit for certain workers at Baxter-Travenol in Hays, Kansas whose layoff occurred more than one year prior to their petition filing date (layoff on or after March 15, 1985, petition filing date April 23, 1986), and extends the 2-year expiration date to cover certain workers under a certification for Babcock and Wilcox in Beaver, Pa.

Conference agreement

The House recedes on the separation of employment amendment, with technical changes consistent with the intent of the provision, and with an amendment to limit the retroactive application to workers who have been continuously unemployed since their original layoff and are enrolled in training.

The Senate recedes on the waiver of time limits and the extension of the expiration date for benefits in the two specific cases.

The purpose of the amendment is to reinstate the "moving eligibility period" that applied prior to the amendments to the program made by the Omnibus Budget Recon-

ciliation Act of 1981. The conferees intend that if a worker is laid off more than one time from adversely affected employment, the most recent total separation date within the period covered by the certification for which the worker meets the statutory qualifying requirements shall be used for purposes of determining that worker's 104-week eligibility period. This amendment does not change the qualifying requirements that must be met by the worker or the maximum and weekly amounts of TRA benefits payable. While the amendment is effective on date of enactment, it shall not be applied so as to shorten the eligibility period of any worker if such period began before date of enactment.

d. Cash benefits (sec. 213 of Senate amendment)

Present law

An additional 26 weeks of TRA may be paid to workers engaged in training (weeks 52 to maximum 78), if the worker applied for training within 210 days after certification or layoff, whichever is later.

House bill

No provision.

Senate amendment

The Senate amendment extends the maximum number of weekly TRA payments from 52 to 78 (less weeks of UI payments), for workers who are enrolled in or have completed training. If the Secretary of Labor has certified that approved training for the worker is not feasible or appropriate, maximum weekly payments would remain at 52.

Effective date: Three years after date of enactment or 1 year plus 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Conference agreement

The Senate recedes, retaining current law.

Job Training for Workers

a. Training cost entitlement (sec. 142 of House bill; sec. 214 of Senate amendment; sec. 1424 of conference agreement)

Present law

To the extent appropriated funds are available, the Secretary of Labor shall approve training for a worker, and the worker shall be entitled to payment of the training costs upon such approval, if the Secretary determines that—

a. there is no suitable employment for the worker;

b. the worker would benefit from appropriate training;

c. there is a reasonable expectation of employment following training;

d. approved training is available; and

e. the worker is qualified to undertake and complete such training.

House bill

The House bill removes the appropriation limitation and requires the Secretary of Labor to approve training for a worker if the five criteria in present law are met; approval entitles the worker to payment of the cost up to $4,000 through a voucher system. Requires the Secretary to prescribe regulations setting forth the criteria under present law that will be used in making determinations on training approval. If the training costs are less than $4,000, then any relocation allowance granted to the worker may be paid, in whole or in part, through the voucher system, up to the aggregate limit of $4,000.

The House bill specifies that remedial education is among the options for approved training, and requires the costs of on-the-job training to be paid in 12 equal monthly installments.

Effective date: Workers covered by petitions filed on or after date of enactment.

Senate amendment

The Senate amendment amends the fourth criteria for training approval to a requirement that approved training is "reasonably" available.

The Senate amendment contains the same training cost entitlement provision in substance as the House bill, except payment may be made directly as well as through a voucher system and there is no specification on the inclusion of remedial education or on the payment of on-the-job training costs.

Effective date: Three years after date of enactment or 1 year plus 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Conference agreement

The House recedes, with amendments (1) to delete the $4,000 per worker limit; (2) to add a sixth criteria for training approval requiring that the training be suitable for the worker and available at a reasonable cost; (3) to limit the training cost entitlement to $80 million per year ($120 million per year if the import fee goes into effect and secondary workers are eligible); (4) to require on-the-job training costs to be paid in equal monthly installments; (5) to include remedial education among the types of training that may be approved; and (6) to make the amendments, including the training entitlement, effective on date of enactment.

The $80 million and $120 million limits cover the costs of training, as well as job search, relocation, and subsistence allowances, and the costs of other related employment services provided under sections 236, 237, and 238 of the Trade Act of 1974 and currently funded under a single level of appropriations. The Secretary is authorized to decide how to apportion available funds among the States if the Secretary estimates that the costs for training will exceed the entitlement "cap" for that fiscal year.

The conferees intend that the payment of approved training be an entitlement, up to the statutory "cap" levels. During such period as funding is from general revenues and after funding is from an import fee, the conferees expect payment of, and appropriations for, these program costs to operate as an appropriated entitlement similar to the Aid to Families with Dependent Children and the Black Lung Disability programs.

The conferees believe it is inappropriate to establish a ceiling on training and related costs for individual workers since such costs may vary significantly from one region of the country to another and from one worker dislocation to another. However, the conferees expect the Secretary of Labor to set forth guidelines for State administering agencies to provide approved training at the lowest reasonable cost for the particular type of training in that region consistent with the objective of assisting import-impacted workers to obtain suitable skills to return to work as quickly as possible.

The conferees would expect that the Secretary of Labor would not approve training that requires excessive transportation and subsistence costs that add substantially to total training costs. The conferees believe that training beyond the worker's normal commuting area should only be approved in situations where appropriate training is not otherwise available. In determining reasonable costs, the conferees intend that total costs of tuition and related training expenses be included.

The conferees intend that training be appropriate to the employment opportunities reasonably available to the worker considering the occupational skills used by the worker in prior employment as well as new skills that might be acquired through a concentrated training program. The conferees are concerned that too often workers displaced by imports are reemployed in jobs that require lower skills. In determining whether training is suitable, the conferees intend training to enable workers to obtain reemployment within a reasonable period of time at a skill level other than they would have been able to obtain absent such training.

b. Commingling of training funds (sec. 214 of Senate amendment; sec. 1424 of conference agreement)

Present law

If the costs of training are paid under TAA, no other payment for such costs may be made under any other provision of Federal law. The Secretary approves training to the extent appropriated funds are available.

House bill

No provision.

Senate amendment

The Senate amendment requires approval of training programs that would otherwise be denied solely because the total cost would exceed an appropriation limitation, if the worker agrees that the excess cost will be paid from another Federal program or from private sources.

Effective date: Date of enactment.

The Senate amendment authorizes approval of training programs that exceed the $4,000 cost limitation, and the use of other Federal or private funds to pay the excess cost.

Effective date: Three years after date of enactment or 1 year plus 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Conference agreement

The House recedes, with a substitute amendment to permit the Secretary to approve training if all or a portion of the costs are paid under any Federal or State program or by private sources, effective on date of enactment, except that training paid by nongovernmental sources shall not be approved if the worker is required to reimburse training costs or wages paid under such a program with TAA funds.

c. Training duration (sec. 214 of Senate amendment; sec. 1424(a) of conference agreement)

Present law

No provision. Regulations impose 104-week limit on duration of training programs that may be approved.

House bill

No provision.

Senate amendment

The Senate amendment prohibits the Secretary of Labor from establishing an absolute limit on the length of training programs for purposes of determining whether to approve training. The Secretary is directed to consider on a program basis whether the training is of suitable duration to achieve the desired skill level within a reasonable period. The Secretary may approve training for any certified worker without regard to whether the worker has exhausted UI or is being paid TRA.

Conference agreement

The Senate recedes, with an amendment to clarify that the Secretary may approve training for certified workers before they have exhausted their UI benefits. The conferees intend that workers be approved for training as early as possible after their layoff even though training is not a requirement until a worker is otherwise eligible for TRA benefits.

d. Breaks in training (sec. 214 of Senate amendment; sec. 1423(c) of conference agreement)

Present law

Additional TRA benefits may be paid only for weeks during which the worker is engaged in approved training.

House bill

No provision.

Senate amendment

The Senate amendment treats workers as participating in approved training and eligible for additional TRA benefits during any training break of less than 2 weeks if the break is provided under such training program or if the worker provides assurances that he will participate in another approved training program after the break.

Conference agreement

The House recedes, with an amendment to limit the TRA eligibility to breaks of less than 2 weeks provided under the same training program, e.g., semester breaks.

e. Financial assistance for training programs (sec. 144 of House bill)

Present law

No provision.

House bill

The House bill authorizes the Secretary of Commerce to provide grants and loans to support training programs for TAA-eligible workers that are administered by educational institutions and firms. The programs must provide training that meets the standards for TAA approval unless the Secretary of Labor considers the program contains innovative training methods that merit testing (no more than 30 percent of total available funds may be used for such innovative programs). Total grants outstanding cannot exceed $1 million; total loans outstanding to one training program cannot exceed $1 million. The program would be financed from a Supplemental Training Fund consisting of appropriations, payments of principal and interest from program loans, and appropriations from repayments and other receipts under the firm TAA program.

Senate amendment

No provision.

Conference agreement

The House recedes.

Program coordination (sec. 214 of Senate amendment; sec. 1424(d) of conference agreement)

Present law

State agencies administer TAA benefits through cooperative agreements with the Secretary of Labor. Training provided under TAA is often administered by a different State agency than training under the Job Training Partnership Act (JTPA).

House bill

No provision.

Senate amendment

The Senate amendment requires agreements with the States to provide for the coordination of the administration of employment services, training, and supplemental assistance under TAA and under the dislocated worker program of JTPA under terms and conditions established by the Secretary in consultation with the States.

Conference agreement

The House recedes.

Benefit information (sec. 143 of House bill; secs. 212, 214 of Senate amendment; secs. 1422, 1424(d) of conference agreement)

Present law

The Secretary of Labor must provide full information to workers about the benefit allowances, training, and other TAA services available and the petition and application procedures. Cooperating State agencies must advise workers to apply for training at the time that they apply for TRA and, within 60 days of the worker's application for such training, interview the worker to determine and review suitable training opportunities.

House bill

The House bill requires State agencies to inform workers of all program benefits and procedural requirements at the time they file for UI, advise the worker to enroll in a job search program or apply for training, as appropriate, and to interview the worker as soon as practicable to determine and review suitable training opportunities. If the State agency has reason to believe a worker may be eligible for TAA, it must facilitate early filing of a petition for certification of eligibility.

Senate amendment

The Senate amendment requires State agencies to advise each worker to apply for training before or at the time the worker applies for TRA and, as soon as practicable, to interview the worker regarding suitable training opportunities.

Effective date: Three years after date of enactment or one year plus 30 days after the President certifies GATT allows an import fee, whichever is earlier.

The Senate amendment requires the Secretary of Labor to notify certified workers of available benefits through the mail and a notice in general circulation newspapers at the time of certification or layoff, whichever is earlier.

Conference agreement

The conference agreement combines the House and Senate provisions.

The conferees intend for the Secretary of Labor to make the best effort to meet the objective of this provision, which is to provide information to eligible workers about benefits under the TAA program. This objective will be met through the combination of notice through newspapers in general circulation and notice by mail. The conferees recognize that neither the Secretary nor the State agencies that are likely to be administering this provision will necessarily have the names and addresses of all workers covered by a certification and are hopeful that unions and certified firms will cooperate and assist the purpose of this provision by voluntarily providing such information. The conferees do not intend that this provision result in unreasonable costs or undue administrative burdens.

Expedited certification (secs. 131, 145 of House bill; sec. 219 of Senate amendment; sec. 1429 of conference agreement)

Present law

The Secretaries of Labor and Commerce must determine within 60 days whether a petition filed on behalf of an individual group of workers in a particular firm or subdivision or a petition filed by an individual firm in an industry meets the criteria for certification of eligibility to apply for TAA.

House bill

The House bill provides for automatic certification by the Secretaries of petitions filed by workers and firms producing articles like of directly competitive with articles produced by industries found seriously injured, or threatened with serious injury, by increased imports in import relief investigations if the petition is filed within 3 years after the Secretary receives a notification from the ITC of its affirmative determination.

Senate amendment

The Senate amendment requires the Secretary of Labor, in consultation with the Secretary of Commerce, to conduct a study of the methods (including but not limited to industry-wide certification) that could be used to expedite worker certification. The Secretary must submit a report, including recommendations, to Congress within 6 months.

Conference agreement

The House recedes.

TAA Funding

a. Trust Fund (sec. 146 of House bill; sec. 217 of Senate amendment; sec. 1427 of conference agreement)

Present law

TAA is funded from general revenues. TRA benefit costs are an entitlement. Training costs, job search and relocation allowances, and administrative costs are subject to discretionary appropriations.

House bill

Worker and firm TAA would be funded from a newly created Trust Fund financed from (1) transfers quarterly of general revenues equivalent to amounts attributable to import relief or section 301 duties and any auctioning of import licenses; (2) deposits of collections from an import duty imposed as described below; and (3) appropriations. Training as well as TRA benefit costs, including their administrative expenses, would be treated as entitlements payable from the Trust Fund without the need for appropriations. Job search and relocation allowances, firm TAA, other administrative costs, and any assistance programs for communities with substantial TAA certifications, would be paid from the Trust Fund subject to advance appropriations.

Senate amendment

Worker and firm TAA would be funded from a newly created Trust Fund financed from transfers quarterly of general revenues equivalent to amounts attributable to an import fee as described below. TAA expenditures cannot exceed an entitlement "cap" equivalent to a one percent import fee. Necessary amounts would be paid from the Fund for drawbacks and duty refunds allowable under other Federal law, all TAA costs, and repayments of advances from appropriations.

The Secretary of the Treasury must submit an annual report to the House Ways and Means and Senate Finance Committees on the condition and operation of the Fund in the preceding and present years and subsequent 5 years.

The Secretary of the Treasury must invest any surplus amounts in U.S. interest-bearing obligations. If expenditures in a year will exceed a one percent import fee, the Secretaries of Labor and Commerce shall make a pro rate reduction in TAA so

all eligible workers and firms receive some assistance and expenditures do not exceed available funds. Authorizes appropriations as repayable advances with interest to cover program costs which are not met by the import fee. (These general fund advances are authorized only to the extent that total program costs do not exceed one percent of imports.)

Effective date: Two years after enactment or 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Conference agreement

The House recedes, with amendments (1) to make amounts in the Trust Fund available for TAA program expenditures and repayable advances, as provided in appropriation Acts; (2) to modify the provisions on pro rata reduction of benefits if expenditures are expected to exceed the total funding ceiling imposed by the level of the import fee; and (3) to limit the fee to a maximum level of 0.15 percent ad valorem.

The conferees intend that continuation of the appropriations process to provide funding for both the TRA and training (and related employment services) components of the worker TAA program once an import fee and Trust Fund go into effect in no way affect or diminish the nature of TRA and training benefits as *entitlements*. The TAA program for firms will continue, as under present law, to be treated as a discretionary program, with only the source of funds transferred from general revenues to the import fee under a Trust Fund.

The amount equivalent to the maximum level of the import fee of 0.15 percent ad valorem constitutes an overall ceiling on total expenditures for the worker and firm TAA programs and also constitutes a "cap" that cannot be exceeded on the total TAA benefit entitlement for workers. Within that overall "cap," a second "cap" of $120 million will apply for worker training costs (including related costs for job search, relocation, and subsistence allowances, other employment services, and administrative expenses).

If, during any fiscal year, the Secretary estimates that expenditures will exceed the training cost entitlement "cap," the Secretary shall exercise the same authority as when such costs were funded from general revenues to apportion remaining funds among the States. If, during any fiscal year, expenditures equal the amount equivalent to a maximum 0.15 percent import fee, either the advances authority will be used (if the maximum import fee has not been imposed for that year) or, if the advances authority is not available, the Secretaries of Commerce and Labor will apply pro rata reductions to the assistance for firms and to *TRA benefits only* under the worker program. The pro rata reductions would be based on estimated expenditures for TRA benefits payable during the remainder of that fiscal year plus the estimated expenditures for the following fiscal year. Such reductions would apply to the TRA benefits otherwise payable to workers not currently receiving TRA benefits; workers already receiving TRA benefits prior to the application of pro rata reductions would not be affected.

The Secretaries, in consultation with the Secretary of the Treasury, may adjust or modify the reduction for the succeeding fiscal year based on estimates for that year. Any pro rata reduction would cease to apply if, in any succeeding year, TAA expenditures fall below the 0.15 percent ad valorem fee, or the Secretaries determine that the amount in the Trust Fund is sufficient to meet expenditures. Pro rata reduction authority would not go into effect again in any subsequent fiscal year unless and until expenditures actually reach the overall ceiling equivalent to the maximum level of the fee.

The conferees intend that the import fee be treated as if it were a duty, for purposes of applying drawback provisions under other Federal law.

b. Import fee (sec. 147 of House bill; sec. 218 of Senate amendment; sec. 1428 of conference agreement)

Present law

No provision.

House bill

The President must seek GATT agreement to permit imposition of a small uniform import duty to fund any program that assists worker adjustment to import competition. If successful, the President must so certify to Congress and in each following fiscal year impose such a duty in an amount not to exceed the costs of the worker TAA program. The duty would apply to all imports (free and dutiable) except most articles imported under special Schedule 8 tariff provisions (e.g., articles exported and returned, personal exemptions, governmental importations) and articles valued at less than $1,000.

Senate amendment

The President must seek GATT agreement to permit imposition of a small uniform import fee to fund any program that assists adjustment to import competition. A fee amounting to the lesser of one percent ad valorem or the percentage necessary to fund the worker and firm TAA programs and to repay any advances from appropriations would be proclaimed on imports 30 days after the President certifies to Congress that he has reached GATT agreement, or two years after enactment, whichever is earlier. The fee would apply to all imports except most articles imported under special Schedule 8 tariff provisions and articles valued at less than $1,000 (same as House bill).

Conference agreement

The House recedes with amendments (1) to require the President to also seek the agreement of parties to bilateral free trade agreements to the imposition of an import fee; (2) to seek international agreement to a maximum import fee of 0.15 percent ad valorem; (3) to incorporate the reporting requirement on the progress of negotiations in the President's annual trade report to the Congress under section 163 of the Trade Act of 1974; and (4) to impose the import fee in the absence of GATT agreement within 2 years unless the President makes a determination that imposition of the fee is not in the national economic interest or if such determination is overridden by Congress by enactment of a joint disapproval resolution passed within 90 days under the "fast track" procedure.

Program Reauthorization (sec. 216 of Senate amendment; sec. 1426 of conference agreement)

Present law

No assistance or payments are to be provided under worker or firm TAA after September 30, 1991.

House bill

No provision.

Senate amendment

The Senate amendment extends the termination date of the TAA worker and firm programs for 2 years until September 30, 1993, and extends the authorization of appropriations for the two programs through fiscal year 1993.

Conference agreement

The House recedes, with an amendment providing that any amounts that may be necessary in addition to available appropriations to meet the $80 million training cost entitlement in fiscal year 1988 are appropriated and shall be charged to the appropriation for payments of such costs in fiscal year 1989. Any such additional amount would not affect the $80 million training cost entitlement for fiscal year 1989.

Effective Dates (sec. 148 of House bill; sec. 221 of Senate amendment; sec. 1430 of conference agreement)

Present law

No provision.

House bill

Under the House bill, amendments are effective upon date of enactment, except the supplemental wage allowance, training requirement, and training entitlement/voucher provisions apply to workers covered by petitions filed on or after date of enactment.

Senate amendment

Under the Senate amendment, the effective dates of amendments are as follows:

Import fee, Trust Fund: Two years after date of enactment or 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Expanded eligibility coverage to essential parts and services, training requirement/cash benefits, training entitlement voucher, and State agency training advice provisions: Three years after date of enactment or 1 year plus 30 days after the President certifies GATT allows an import fee, whichever is earlier.

Other provisions: Date of enactment.

Conference agreement

Under the conference agreement, all amendments are effective upon date of enactment except for the import fee (as provided under section 1428); the Trust Fund (the first date on which the import fee applies); the expanded eligibility to secondary workers and firms (one year after the first date the import fee applies); certain benefit notification provisions (30 days after enactment); the training requirement (90 days after enactment); and the separation from employment program (date of enactment unless it would shorten the eligibility period of workers already eligible under a prior separation).

The 90-day delay on imposition of the training requirement recognizes that workers currently receiving TRA benefits on date of enactment, as well as workers currently certified eligible but still collecting UI benefits, would be unfairly penalized by immediate application of this provision. The conferees expect the Secretary of Labor and the State agencies to make every effort within the 90-day period to administer the training requirement. If training is not feasible by the end of this transition period, because of difficulties in finding appropriate training within this period, the conferees expect the Secretary to revoke such certifications and require training once it is feasible.

SUBTITLE E—NATIONAL SECURITY

Imports that Threaten National Security (sec. 191 of House bill; sec. 501 of Senate amendment; sec. 1501 of conference agreement)

a. Time limits for Secretary of Commerce's report

Present law

Section 232 of the Trade Expansion Act of 1962 requires the Secretary of Commerce to investigate, upon request or own motion, the effects of imports of an article on national security and to report his findings and recommendations to the President within one year of initiating an investigation. If the Secretary finds that an article is being imported in such quantities or under such circumstances as to threaten to impair the national security, he is required to so advise the President. Unless the President makes a contrary finding, he must take such action for such time as he deems necessary to adjust the imports of such article and its derivatives.

House bill

The House bill reduces the period in which the Secretary must report his findings and recommendations to the President to 270 days from initiation of the investigation.

Senate amendment

The Senate amendment reduces the period in which the Secretary must report his findings and recommendations to 180 days from initiation of the investigation.

Conference agreement

The Senate recedes.

b. Defense needs assessment

Present law

No provision. In the course of his investigation, the Secretary of Commerce is required to seek information and advice from, and to consult with, the Secretary of Defense and other appropriate officers of the United States, to determine the effects on the national security of imports of the article.

Both the Secretary of Commerce and the President are required, under current law, to 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 as those affect such industries and the capacity of the United States to meet national security requirements.

House bill

No provision.

Senate amendment

The Senate amendment requires the Secretary of Commerce to immediately notify the Secretary of Defense of the investigation with respect to imports of an article. Upon receiving such notice, the Secretary of Defense is required to conduct a separate defense needs assessment with respect to such article. The assessment is to be completed and submitted to the Secretary of Commerce within three months of the start of the investigation.

The Secretary of Commerce is required to include the defense needs assessment in the Secretary's report to the President. The report must also include a written statement by the Secretary of Defense expressing concurrence or disagreement with the Secretary of Commerce's findings and recommendations, and the reasons therefor.

Conference agreement

The House recedes with a substitute amendment. The conferees agreed to a provision that requires the Secretary of Commerce to immediately notify the Secretary of Defense of any investigation initiated, and to consult with the Secretary of Defense regarding the methodological and policy questions raised by the investigation. Upon request of the Secretary of Commerce, the Secretary of Defense is required to provide defense requirements with respect to such article.

c. Classification of report

Present law

No provision.

House bill

No provision.

Senate amendment

Under the Senate amendment, the Commerce Secretary's report, or any portion of it (including the Defense Secretary's assessment) may be classified only if public disclosure would clearly be detrimental to the security of the United States. Any portion of the report which is not classified and is not proprietary information shall be published in the *Federal Register*.

Conference agreement

The House recedes, with an amendment to clarify that classified information need not be subject to public disclosure, deleting the language of the Senate bill limiting the withholding of such information only to instances when disclosure is clearly detrimental to U.S. security.

d. Time limit for Presidential action

Present law

Present law provides no time limit after the Commerce Secretary's report for the President's decision on the appropriate action to take.

House bill

The House bill requires the President to decide whether to take action within 90 days after receiving the Secretary's report, and to proclaim such action within 15 days.

Senate amendment

The Senate amendment requires the President to decide whether to take action within 90 days after receiving the Secretary's report.

Conference agreement

The Senate recedes.

e. Presidential report to Congress

Present law

Within 60 days after he takes any action, the President is required to report to the Congress the action taken and the reasons therefor.

House bill

No provision.

Senate amendment

The Senate amendment requires that the President make a written statement of the reasons why he has decided to take action. The statement shall be included in the report made and published upon the disposition of the case.

Conference agreement

The House recedes with an amendment requiring the President to submit the written statement to Congress within 30 days of his decision.

f. Authority to negotiate import limitations

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment specifically states that the actions the President may take include, but are not limited to, the negotiation and conclusion of any agreement restricting imports to the United States of the article that threatens to impair the national security.

Conference agreement

The Senate recedes. It is the view of the conferees that the broad scope of current law, which authorizes the President to "take such action, and for such time, as he deems necessary" to adjust imports, already authorizes the negotiation of such agreements, and that the President would use this authority as appropriate.

g. Enforcement of voluntary restraint agreements (VRA's)

Present law

No provision.

House bill

The House bill authorizes the Secretary of Commerce to request the Secretary of the Treasury to carry out whatever actions are necessary or appropriate to attain the objectives of the decision in the section 232 investigation on machine tools and to enforce any restrictions contained in the VRA's negotiated as a result of that case, including requirement that valid export licenses or other foreign government documentation be presented as a condition of entry into the United States.

Senate amendment

The Senate amendment authorizes the President, in language substantially identical to that of the House bill, to enforce *any* agreements entered into under this section, including the machine tool VRA's.

Conference agreement

The Senate recedes.

h. Action if agreement not reached or ineffective

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides that, if the action taken by the President is negotiation of an agreement, and either no agreement is reached within 270 days of the Secretary's report or an agreement is not being carried out or is ineffective in eliminating the threat to the national security, the President shall take such other actions as he deems necessary to adjust the imports so they will not threaten to impair the national security. If he decides not to take additional action, he must publish his reasons in the Federal Register.

Conference agreement

The House recedes with a technical amendment changing the time limit to 180 days of the President's determination to take action.

SUBTITLE F—TRADE AGENCIES; ADVICE, CONSULTATION, AND REPORTING REGARDING TRADE MATTERS

PART 1—FUNCTIONS AND ORGANIZATION OF TRADE AGENCIES

SUBPART A—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

a. Functions (sec. 181(a) of House bill; sec. 1601(a) of conference agreement)

Present law

The Office of the U.S. Trade Representative (USTR) is established under section 141 of the Trade Act of 1974 in the Executive Office of the President:

—to be the chief U.S. representative for trade negotiations;

—to report directly and be responsible to the President and the Congress on the administration of the trade agreements program;

—to advise the President and the Congress on matters related to the trade agreements program; and

—to chair the interagency trade organization.

House bill

The House bill adds the functions enumerated in the Reorganization Plan of 1979. The USTR shall:

—have primary responsibility for developing and coordinating implementation of U.S. international trade policy;

—serve as the principal advisor to the President on international trade policy and advise the President on the impact of other U.S. Government policies on international trade;

—have lead responsibility for the conduct of, and be chief U.S. representative for, international trade negotiations;

—issue and coordinate trade policy guidance to other agencies on basic issues of policy and interpretation arising in the exercise of international trade questions, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

—act as principal international trade spokesman of the President;

—report directly and be responsible to the President and the Congress on the administration of trade agreements programs;

—advise the President and the Congress on nontariff barriers, international commodity agreements, and other matters related to the trade agreements program;

—be responsible for making reports to the Congress on trade negotiations and the trade agreements program;

—be chairman of the interagency trade organization, and consult with and be advised by that organization in performing his functions; and

—in addition to powers and authorities currently delegated, be responsible for such other functions as the President may direct.

The House bill also expresses the sense of the Congress that the USTR should:

—be the senior representative on any body the President may establish to provide him advice on overall economic policies in which international trade matters predominate; and

—be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

b. Unfair trade practices (sec. 181(b) of House bill; sec. 1601(b) of conference agreement)

Present law

No provision. The Office of General Counsel of the USTR administers USTR section 301 functions, including the coordination of interagency support through a section 301 subcommittee of the interagency trade organization.

House bill

The House bill establishes an Office of Unfair Trade Investigations in the USTR:

—to coordinate the application of interagency resources to specific unfair trade practice cases;

—to prepare the annual foreign trade barriers (National Trade Estimates) report under section 181 of the Trade Act of 1974;

—to identify and refer to the appropriate administering authority for consideration of action (including discretionary self-initiation) of each foreign act, policy, or practice, identified in the annual report or otherwise known to the Office from other available information, that may be an unfair trade practice that either is considered to be inconsistent with a trade agreement and has a significant adverse impact on U.S. commerce, or has a significant adverse impact on domestic firms or industries too small or financially weak to initiate cases under the trade laws. The USTR must submit an annual report to the House Committee on Ways and Means and the Senate Committee on Finance describing each referral and any action taken.

—to identify foreign practices having a significant adverse impact on U.S. commerce that attainment of U.S. negotiating objectives would eliminate; and

—to identify, on a biennial basis, U.S. Government policies and practices that may constitute unfair trade practices under U.S. laws.

In performing these the USTR is assisted by an interagency advisory committee chaired by USTR and consisting of senior representatives from specified sections of the Departments of State, Commerce, and Agriculture."

"Unfair trade practices" include acts, policies, or practices that may be subsidies subject to the countervailing duty law; dumping subject to the antidumping law; unfair methods of competition or acts, subject to section 337; or acts, policies, or practices that may be actionable under section 301.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with amendments (1) to include the unfair trade practice responsibilities as USTR functions but not to establish a separate Office of Unfair Trade Investigations; (2) to include the reporting requirements on referral and action on unfair trade practices in the current annual report of the President on the trade agreements program submitted to the Congress under section 163 of the Trade Act of 1974; and (3) to authorize the USTR to request advice from the ITC, in addition to the agencies on the advisory committee, on unfair trade practices.

The conferees intend that a key official within the Office of the USTR be designated with the lead responsibility for these particular functions.

c. Transfer of GSP authority (sec. 182 of House bill)

Present law

The President is authorized to designate beneficiary developing countries and eligible articles to receive duty-free treatment under the Generalized System of Preferences (GSP) program. All other authorities, determinations, and functions under the GSP program also reside with the President.

House bill

The House bill transfers all authorities, determinations, and other functions under GSP from the President to the USTR.

Senate amendment

No provision.

Conference agreement

The House recedes.

SUBPART B—UNITED STATES INTERNATIONAL TRADE COMMISSION

a. Paperwork Reduction Act (sec. 188 of House bill; secs. 1611, 1612 of conference agreement)

Present law

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501) requires that all Federal agencies collecting information from 10 or more members of the public submit their questionnaires to OMB for approval prior to seeking the information. In the event OMB disapproves the issuance of a questionnaire, the Act authorizes independent regulatory agencies to override OMB disapproval by majority vote. The Act defines the term "independent regulatory agency" to include certain enumerated agencies "and any other similar agency designated by statute as a Federal independent regulatory agency or commission." The Commission is not one of the enumerated agencies and it is unclear whether the Commission is an "independent regulatory agency or commission."

House bill

The House bill amends section 330 of the Tariff Act of 1930 to designate the Commission as an "independent regulatory agency" for purposes of the Paperwork Reduction Act.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment providing that, in determining eligibility for the ITC chairmanship, all of a commissioner's service shall be taken into account, including prior terms of service.

b. Treatment of confidential information by ITC (sec. 187 of House bill; sec. 1613 of conference agreement)

Present law

Section 332(g) currently requires that the Commission "put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command."

House bill

The House bill amends section 332(g) to prohibit the Commission from releasing information which it considers to be confidential business information, unless that party submitting the confidential business information had notice, at the time of submission of the information that such information would be released by the Commission or the submitting party has subsequently consented to release of the information.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

c. Import monitoring (sec. 185 of House bill)

Present law

No provision.

House bill

The House bill directs the U.S. International Trade Commission to monitor imports into the United States in order to identify, rank, and analyze product sectors for which imports are likely to pose potential significant trade impact problems for U.S. industries. The Commission is directed to take into account such factors as changing net trade balances and evidence of increasing domestic market penetration with respect to such product sectors and to submit a quarterly report containing such analysis to the Committee on Ways and Means and the Committee on Finance.

Senate amendment

No provision.

Conference agreement

The House recedes.

d. Reports on sectoral competitiveness (sec. 185 of House bill)

Present law

Section 332 of the Tariff Act of 1930 authorizes the ITC to investigate and report on numerous subjects concerning tariff and trade relations, including conditions, causes, and effects relating to competition of foreign industries with U.S. industries.

House bill

The House bill requires the ITC to submit to Congress and to the USTR, on an annual basis, studies on the conditions of competition in U.S. and global markets with respect to key sectors of the U.S. economy, and on the implications of such competitive conditions for U.S. national economic security. The purpose of these studies is to analyze competitive conditions in a manner which will be useful to U.S. policymakers in anticipating sectoral trade problems and in formulating appropriate trade policies to address such sectoral problems.

In deciding which sectors should be the subject of these studies, ITC shall consult with USTR, and with the House Committee on Ways and Means and the Senate Committee on Finance, and shall consider the following factors:

(a) the extent to which the sector involves a critical technology;

(b) the extent to which the sector contributes to the industrial base of an economy;

(c) the extent to which the sector contributes to the health or condition of other sectors;

(d) the role of the sector in the domestic economy generally (GNP, employment, etc.);

(e) the potential role of the sector in global markets over the next decade.

USTR would be required to take these studies into account in developing its annual Trade Policy Agenda.

Senate amendment

No provision.

Conference agreement

The House recedes.

e. Reports on impact of trade restraints (sec. 220 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the ITC to submit to Congress on Feb. 15 of each year, a report on the negative economic effects on the United States of significant existing trade import restraint programs, including any impact on income and employment of workers and on the ability of U.S. companies to compete, on price and quality bases, in domestic and international markets.

The provision also requires the ITC to submit to Congress within 60 days of any new or significantly altered trade import restraint program, a supplementary report on the negative economic effects of such program.

Conference agreement

The Senate recedes.

Authorization of Appropriations

a. U.S. International Trade Commission (sec. 701 of Senate amendment)

Present law

The fiscal year 1988 authorization is $35,386,000.

House bill

No provision.

Senate amendment

The Senate amendment provides a fiscal year 1988 authorization of $35,386,000.

Conference agreement

The Senate recedes (authorization included in the Omnibus Budget Reconciliation Act of 1987).

b. U.S. Customs Service (sec. 702 of Senate amendment)

Present law

The fiscal year 1988 authorization is $1,081,501,000.

House bill

No provision.

Senate amendment

The Senate amendment provides a fiscal year 1988 authorization of $1,035,211,000 and requires advance notice to Congress of certain actions.

Conference agreement

The Senate recedes (authorization included in the Omnibus Budget Reconciliation Act of 1987).

c. Office of the U.S. Trade Representative (sec. 703 of Senate amendment)

Present law

The fiscal year 1988 authorization is $15,172,000.

Senate amendment

The Senate amendment provides a fiscal year 1988 authorization of $15,348,000.

Conference agreement

The Senate recedes (authorization included in the Omnibus Budget Reconciliation Act of 1987).

SUBPART C—INTERAGENCY TRADE ORGANIZATION

Functions and Organization (sec. 181(c) of House bill; sec. 1621 of conference agreement)

Present law

The President must establish an interagency trade organization (the Trade Policy Committee structure) consisting of the USTR and heads of other agencies as the President designates, to assist him in carrying out his trade functions. The organization may invite the participation of any agency not represented when matters of its interest are under consideration.

House bill

The House bill specifies that the interagency trade organization will be composed of the USTR as chair, and the Secretaries of Commerce, State, Treasury, Agriculture, and Labor. The USTR may invite other agencies, as appropriate, to attend particular meetings if subjects of specific functional interest to such agencies are under consideration.

The functions of the organization are:

—to assist and make recommendations to the President in carrying out his functions under the trade laws and to advise the USTR in carrying out his functions;

—to assist the President and advise the USTR on the development and implementation of U.S. international trade policy objectives; and

—to advise the President and the USTR on the relationship between U.S. international trade policy objectives and other major policy areas which may significantly affect U.S. overall international trade policy and trade competitiveness.

The organization, in carrying out its functions, is required to take into account the advice of Congressional and private sector advisers.

The House bill also expresses the sense of the Congress that this statutory organization should be the principal interagency forum within the Executive branch on international trade policy matters.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

PART 2—ADVICE AND CONSULTATION REGARDING TRADE POLICY, NEGOTIATIONS, AND AGREEMENTS

Information and Advice from Private and Public Sectors Relating to Trade Policy and Agreements

a. Advisory committee functions (sec. 103 of House bill; sec. 1631 of conference agreement)

Present law

The President must seek information and advice from representatives of the private sector and non-Federal governmental sector on negotiating objectives and bargaining positions before entering into a trade agreement, on the operation of any trade agreement, and on other matters concerning administration of U.S. trade policy.

House bill

The House bill expands the committees' role to include information and advice on the development and implementation of overall U.S. trade policy, and on priorities for actions to implement such policy. Requires that information and advice on negotiating objectives be sought and considered, to the maximum extent feasible, before negotiations begin.

The House bill adds that consultations on U.S. overall current trade policy shall include, but are not limited to, the following elements:

—the principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement;

—the implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes;

—the actions taken under U.S. trade laws and the effectiveness of such actions in achieving trade policy objectives; and

—important developments in other areas of trade.

The President must take such advice into account in determining trade negotiating priorities and positions.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

b. Advisory committee structure (sec. 103 of House bill; sec. 106(c) of Senate amendment; sec. 1631 of conference agreement)

Present law

The committees include a 45-member Advisory Committee for Trade Negotiations (ACTN), appointed by the President to provide overall policy advice. It includes representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumers, and the general public, to meet at the call of USTR.

In addition, there are general policy advisory committees for industry, labor, agriculture, and services; sectoral or functional advisory committees representative of all industry, labor, agricultural, or service interests; and policy advisory committees representing non-Federal governmental interests.

House bill

The House bill renames ACTN the Advisory Committee for Trade Policy and Negotiations, nominated by the USTR and appointed by the President, to represent non-Federal governments, labor, industry, agriculture, small business, services, retailers and consumer interests, and to be broadly representative of key sectors and groups of the economy, particularly those affected by trade. Appointments must reflect a balance between the political parties. The Committee shall meet at least quarterly and at the call of USTR or two-thirds of its members.

The House bill also expands the general policy advisory committees to include investment and defense. Explicitly authorizes the formation of special task forces, plenary meetings of chairmen, or other working groups.

Senate amendment

The Senate amendment requires that a predominant number of the members of any advisory committee, including the ACTN, not belong to the same political party.

Conference agreement

The Senate recedes, with amendments for (1) members to be appointed by the President upon recommendation, rather than nomination, by the USTR; (2) membership selection for the Advisory Committee for Trade Policy and Negotiations and for all other advisory committees to be made without regard to political affiliation; and (3) the Advisory Committee to meet "as needed."

c. Reports (sec. 103 of House bill; sec. 1631 of conference agreement)

Present law

Each committee must meet at the conclusion of each trade agreement negotiation to provide the President, Congress, and the USTR a report, including an advisory opinion as to whether and to what extent the agreement promotes U.S. economic interests and provides for equity and reciprocity within sector or functional areas involved.

House bill

The House bill requires each committee also to report whether and to what extent the trade agreement achieves U.S. overall and principal negotiating objectives.

The House bill also requires each report on a nontariff or bilateral trade agreement to be provided no later than the date the draft implementing bill is submitted to the Congress.

Senate amendment

No provision. (Another provision requires the ACTN to submit to the Congress a midterm report, i.e., by January 3, 1991, on progress being made in multilateral and bilateral negotiations.)

Conference agreement

The Senate recedes, with an amendment requiring the reports to be provided no later than the date Congress receives the 90-day advance notice from the President required under the "fast track" Congressional implementation procedure of his intention to enter into a trade agreement.

d. Treatment of advice (sec. 103 of House bill; sec. 1631 of conference agreement)

Present law

USTR and other appropriate agencies must consult with and obtain information and advice from the committees on a continuing and timely basis, including before and during negotiations. Members may be permitted to participate in international meetings to the extent the head of the U.S. delegation deems appropriate, but may not speak or negotiate for the United States. The USTR is not bound by committee advice or recommendations but must inform the committees of failures to accept it; the President must include in the annual trade report to Congress a report by USTR on consultations and reasons for not accepting advice or recommendations.

House bill

Committee members may also be designated as advisors to a negotiating delegation.

The USTR must inform the committees of significant departures from their advice or recommendations. During the course of consultations with Congress, advisory committee information and advice shall be made available to Congressional advisors.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

e. Confidential information (sec. 103 of House bill; sec. 1631 of conference agreement)

Present law

Trade secrets and confidential information submitted by advisers, or other information and confidential advice submitted by the private sector shall not be disclosed to any person other than to U.S. Government officials designated by the USTR and members and staff of the House Ways and Means and Senate Finance Committees accredited as official advisers or designated by the Committee chairman. Confidential information submitted by government officials to the advisers shall not be disclosed other than in accordance with rules issued by USTR and other appropriate agencies.

House bill

Trade secrets and confidential information submitted by advisers, or other information and confidential advice submitted by the private sector, may be disclosed upon request to U.S. Government officials designated by USTR, members and staff of the House Ways and Means and Senate Finance Committees accredited as official advisers or designated by the Committee chairman, and members and staff of any other House or Senate committee designated as advisers or by the Committee chairman if the information is relevant to trade policy or negotiations within their legislative jurisdiction. Confidential information submitted by government officials to the advisers may be disclosed in accordance with rules issued by the USTR and other appropriate agencies.

Nothing in these provisions or rules shall be construed to affect the ability of the Congress, any Congressional committee, or the Comptroller General to obtain trade secrets and commercial or financial information or any information submitted, in accordance with Federal statutes and the rules of the House and Senate.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment to include the proviso on the availability of information to the Congress and the Comptroller General in the Statement of Managers rather than in the statute.

The conferees intend that nothing in the provisions or rules contained in section 1631 of the conference agreement shall be construed to affect the ability of the Congress, any Congressional committee, or the Comptroller General to obtain trade secrets and commercial or financial information or any information submitted, in accordance with other Federal statutes and the rules of the House and Senate.

Congressional Liaison Regarding Trade Policy and Agreements (sec. 104 of House bill; secs. 602, 103(d) of Senate amendment; sec. 1632 of conference agreement)

Present law

Section 161 of the Trade Act of 1974 requires the Speaker of the House and the President pro tempore of the Senate, at the beginning of each session of Congress, each to select five official Congressional advisors (not more than three from the same political party) from the House Committee on Ways and Means and from the Senate Committee on Finance to be accredited by the President as official advisers to U.S. delegations to international negotiating sessions on trade agreements.

The USTR must keep each advisor informed of U.S. objectives and the status of negotiations and of any changes which may be recommended in U.S. law or administration to carry out any trade agreement. The chairmen may designate additional members and staff of their committees to have access to the information.

House bill

The House bill authorizes the Speaker and the President pro tempore, after consultations with the Chairmen and Ranking Minority Members of the House Ways and Means and Senate Finance Committees, to designate additional Congressional advisors on specific policy matters or negotiations from any other committee that has jurisdiction over legislation likely to be affected. Not more than three members (not more than two from the same political party) may be selected from any other committee.

All advisors shall be accredited by the USTR on behalf of the President, to provide advice on the development of trade policy and priorities for implementation as well as on trade negotiations. The committee chair-

men may designate additional members and staff to have access to information.

The USTR must keep each official adviser currently informed on matters affecting U.S. trade policy, as well as on negotiating objectives, the status of negotiations, and any changes in U.S. laws recommended to carry out trade agreements.

The USTR shall consult with the House Ways and Means and Senate Finance Committees and other appropriate committees of the House and Senate (when necessary in executive session) not less than quarterly on the development, implementation, and administration of overall U.S. trade policy, including, but not limited to:

—the principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement;

—the implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes;

—actions taken, and proposed to be taken, under U.S. laws and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives; and

—important developments and issues in other areas of trade policy.

Senate amendment

The Senate amendment requires the Speaker and President pro tempore each to appoint, in addition to the advisers under present law, two members with expertise in agricultural trade matters, on recommendation of the chairmen of the House and Senate Agriculture Committees, to serve as official advisers to U.S. delegations to international sessions relating to GATT multilateral agricultural trade agreements.

The Senate amendment requires the USTR to keep the additional agricultural trade advisers informed of agricultural trade objectives, the status of negotiations, and any changes in U.S. law or administration to carry out agricultural trade agreements.

The Senate amendment also requires the USTR and the Advisory Committee for Trade Negotiations to consult with the House Ways and Means and Senate Finance Committees and with any other committees of jurisdiction on a continuing basis concerning negotiations, progress or obstacles in achieving objectives, and on all matters concerning U.S. trade policy and priorities.

Conference agreement

The Senate recedes, with an amendment providing for USTR consultations with committees on a continuing rather than quarterly basis.

Transmission of Agreements to Congress (sec. 104 of House bill)

Present law

Section 162 of the Trade Act of 1974 requires the President, if he has not previously done so, to transmit any trade agreement to the Congress with a statement of his reasons for entering into it.

House bill

The House bill expands the statement to include (1) a description of the consultations on the trade agreement between the USTR and the advisory committees and the reasons if any advice or recommendations were not accepted; and (2) an explanation of how the agreement will enhance U.S. international trade competitiveness, expand export opportunities, establish equitable trade patterns, and further overall U.S. trade policy.

Senate amendment

No provision.

Conference agreement

The House recedes.

Trade Competitiveness Impact Statements (sec. 105 of House bill)

Present law

No provision.

House bill

The House bill requires the President, at least 60 days before an executive trade agreement takes effect that may have a significant impact on the ability of domestic industries to compete, to submit to the House Ways and Means and Senate Finance Committees and to other appropriate committees of Congress a statement describing the likely short- and long-term impact on U.S. imports and exports, balance-of-payments, and ability of industries to compete. The President may publish and submit a statement to the committees waiving the requirement if necessary to serve the national interest, to deal with an emergency, to comply with statutory deadlines, or to take action required by law.

Senate amendment

No provision.

Conference agreement

The House recedes.

PART 3—ANNUAL REPORTS AND NATIONAL TRADE POLICY AGENDA

Annual Trade Policy Agenda (sec. 102 of House bill; sec. 1641 of conference agreement)

Present law

No provision.

House bill

The House bill requires the USTR by March 1 of each year to submit a statement to the Congress of:

—U.S. trade policy objectives and priorities for the year and the reasons therefor;

—actions proposed or anticipated during the year to achieve these objectives and priorities, including actions authorized under the trade laws and negotiations with foreign countries;

—any proposed legislation necessary or appropriate to achieve any objectives or priorities; and

—the progress made in achieving trade policy objectives and priorities during the previous year.

The USTR must consult with appropriate private sector advisers and the appropriate Congressional committees before submitting the statement and take into account annual sectoral competitiveness studies prepared by the ITC. The USTR and other appropriate officials must also consult periodically with the appropriate Congressional committees on the status and results of actions undertaken, and on any developments which may require or result in changes in the agenda.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with amendments (1) to include the statement in the current annual report of the President on the trade agreements program submitted to the Congress under section 163 of the Trade Act of 1974, and (2) to require submission of that annual report by March 1 of each year.

Annual Trade Report (sec. 959 of Senate amendment; sec. 1641 of conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the USTR and the Treasury Secretary jointly to prepare and submit annually to the Ways and Means and Finance Committees a comprehensive report on specified trade and economic indicators, trade barriers, and unfair trade practices of the United States and all other countries; with 2 year projections regarding certain trade and economic indicators for certain countries and groups of countries; and conclusions as to whether the projections are satisfactory to the United States, and, if not, the policy changes which will be implemented to improve the outlook. The USTR and the Treasury Secretary are to consult with the Chairman of the Federal Reserve in preparing the report and with the Committees after its submission. Each Committee must publish a report with its views and recommendations on the USTR/Treasury reports.

Conference agreement

The House recedes with amendments incorporating the reporting requirement into the annual trade policy agenda established as part of this bill; dropping specific reference to the countries or groups of countries to be studied; limiting the projections to one year; and other amendments.

The conferees anticipate that on the basis of current trade patterns, the following countries and groups of countries will be covered in the annual trade report: Japan; Canada; the European Communities (EC); all other Western European nations considered as a group; Latin America; Korea, Taiwan, Hong Kong, and Singapore considered as a group; the Arab member countries of the Organization of Petroleum Exporting Countries; and all other countries considered as a group. The conferees recognize, however, that a focus on individual countries within these groupings (e.g., France, Germany, or other countries of the EC) or other groupings may be more appropriate for the purposes of the economic projections required in the report. In addition, if the trade policies of individual countries within these groupings differ significantly, a break-out of these countries may be appropriate for the purposes of this report. Finally, the President may, as necessary, submit portions of the report in confidence to the committees specified.

SUBTITLE G—TARIFF PROVISIONS

PART I—AMENDMENTS TO THE TARIFF SCHEDULES OF THE UNITED STATES

SUBPART A—PERMANENT CHANGES IN TARIFF TREATMENT

SECTION 1711. BROADWOVEN FABRICS OF MAN-MADE FIBERS (sec. 807 of House bill; sec. 802 of Senate amendment)

Present law

Woven fabrics of man-made fibers, other than those containing over 17 percent of wool by weight, are included in TSUS item 338.50, with a possibility of 99 statistical annotations.

House bill

The House bill renumbers the existing provisions to provide for a possible 297 statistical annotations on woven fabrics of man-made fibers, but does not change rates of duty.

Senate amendment

The Senate amendment is identical to the House bill, except it includes "Special" rate column provisions.

Conference agreement

The House recedes.

SECTION 1712. CLASSIFICATION OF NAPHTHA AND MOTOR FUEL BLENDING STOCKS (sec. 809 of House bill; sec. 803 of Senate amendment)

Present law

Naphtha and motor fuel blending stocks are classified in part 1, part 2, or part 10 of schedule 4, depending on the specific characteristics of the blending stock.

House bill

The House bill creates a single provision applicable to "motor fuel blending stocks," requires verification that they are to be used in manufacturing motor fuels, and provides tariff rates identical to those on imported motor fuel, 1.25 cents per gallon column 1 and 2.5 cents per gallon column 2.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The Senate recedes with a technical amendment clarifying the definition of "naphthas" to not include those used for direct blending in the manufacture of motor fuel.

SECTION 1713. MARKING OF WATCHES AND WATCH COMPONENTS (sec. 814 of House bill; sec. 804 of Senate amendment)

Present law

Present law requires that any imported watch movement, case, or dial be conspicuously and indelibly marked with country of manufacture; name of manufacturer or purchaser; the number of jewels, if any; and the number and classes of adjustments.

House bill

The House bill retains present marking requirements except for 5 changes: eliminates dials from marking requirements; requires "legible" rather than "conspicuous" marking; allows "mold-marking"; deletes the requirement concerning adjustments; and gives the manufacturer the option of marking either the watch case or the bezel.

Senate amendment

The Senate amendment is substantially the same as the House bill, except it retains "conspicuous" marking requirement and contains no option of marking on watch case or bezel.

Conference agreement

The House recedes.

SECTION 1715. CERTAIN WORK GLOVES (sec. 806 of House bill; sec. 806 of Senate amendment)

Present law

Work gloves without fourchettes and produced from plastics or rubber-coated fabric which has been cut into pieces and sewn together are classified in TSUS item 705.86, (column 1 rate of 14 percent ad valorem), as gloves of rubber or plastics.

House bill

The House bill amends headnote 5(a) to schedule 3 and headnote 1 to subpart 7-1-C to designate as textile products all work gloves without fourchettes and having a textile component which are coated, filled, impregnated, or laminated with rubber or plastics, thereby subjecting them to tariff rates based on component man-made or cotton fibers and method of construction.

Senate amendment

The Senate amendment is substantially the same as the House bill.

Conference agreement

The House recedes with a technical amendment to clarify the definition of gloves which is "other than gloves with fourchettes."

SECTION 1716. HATTERS' FUR (sec. 804 of House bill; sec. 807 of Senate amendment)

Present law

Both hatters' fur and carroted furskins (TSUS item 186.20) are dutiable at a column 1 rate of 15 percent ad valorem. Column 1 rate for hatters' fur is suspended through December 31, 1985.

House bill

The House bill makes permanent the duty-free treatment for hatters' fur, retroactive to December 31, 1985.

Carroted furskins and hatters' fur are separated for tariff purposes.

Senate amendment

The Senate amendment is identical to the House bill, except it includes a "Special" rate column provision and provides for staging.

Conference agreement

The House recedes.

SECTION 1717. EXTRACORPOREAL SHOCK WAVE LITHOTRIPTERS (sec. 812 of House bill; sec. 808 of Senate amendment)

Present law

The Customs Service classifies extracorporeal shock wave lithotripters as "electro-surgical apparatus" under TSUS item 709.15, with a column 1 rate of 7.9 percent ad valorem.

House bill

The House bill amends the article description of TSUS item 709.15 to "electro-surgical apparatus other than extracorporeal shock wave lithotripters", thereby changing the classification of these apparatuses to TSUS item 709.17 ("other electro-medical apparatus, and parts thereof"), with a column 1 rate of 4.2 percent ad valorem retroactive to December 31, 1982.

Senate amendment

The Senate amendment is substantially identical to the House bill.

Conference agreement

The Senate recedes.

SECTION 1718. SALTED AND DRIED PLUMS (sec. 802 of House bill; sec. 809 of Senate amendment)

Present law

Salted and dried plums are classified as "otherwise prepared or preserved" (TSUS item 149.28) at a column 1 duty rate of 17.5 percent ad valorem.

House bill

The House bill creates a new tariff classification for plums, soaked in brine and dried, at the 2 cents per pound duty rate currently applicable to other dried plums. Additionally, it amends the article description for TSUS item 149.26 to read "dried, salted or not salted but not otherwise further prepared or preserved."

Senate amendment

The Senate amendment is substantially the same as the House bill, except it amends the article description for TSUS item 149.26 to exclude the phrase "but not otherwise further prepared or preserved," include the "Special" rate column provision and provide for staging.

Conference agreement

The House recedes with an amendment to create a new tariff classification which allows for a clear distinction between "plums, soaked in brine and dried" and "prunes and prunelles soaked in brine and dried."

SECTION 1719. TELEVISION APPARATUS AND PARTS (sec. 811 of House bill; sec. 811 of Senate amendment)

Present law

Color picture tubes (TSUS item 687.35) are dutiable at a column 1 rate of 15 percent ad valorem and a column 2 rate of 60 percent ad valorem. Color assemblies (TSUS item 684.92) are dutiable at a column 1 rate of 5 percent ad valorem, and a column 2 rate of 35 percent ad valorem.

House bill

The House bill closes a loophole created by a Customs Service ruling that picture tubes shipped in separate containers with an equal number of assemblies are dutiable at 5 percent ad valorem as assemblies rather than at 15 percent as picture tubes.

Additionally, it provides for a duty increase phase-in period on such picture tubes to be dutiable at 11 percent ad valorem through October 31, 1987.

The bill also suspends the duty on color picture tubes less than 12 inches through December 31, 1990, and on color tubes 30 inches and over through September 30, 1988.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The Senate recedes with an amendment to drop the clause addressing the duty increase phase-in period because it expired on October 31, 1987.

SECTION 1722. IMPORTATION OF FURSKINS (sec. 815 of House bill; sec. 899B of Senate amendment)

Present law

Imports of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furskins which are the product of the Union of Soviet Socialist Republics, are prohibited from entry into the United States.

House bill

The House bill ends the prohibition of importation of furskins from Russia.

Senate amendment

The Senate amendment expresses the sense of the Senate that the prohibition on the importation of Soviet furskins should remain in effect.

Conference agreement

The Senate recedes.

SECTION 1723. GRAPEFRUIT (sec. 803 of House bill)

Present law

A tariff rate of 20 cents per gallon for not concentrated grapefruit juice (TSUS item 165.32) applies to both natural (fresh) juice and to juice produced from concentrated juice (reconstituted).

House bill

The House bill revises the current law, applying the lower tariff rate of 20 cents per

gallon only to natural unconcentrated juice. Reconstituted juice would be reclassified into the category currently applicable to concentrated juice (TSUS item 165.36) and the duty would be 35 cents per gallon.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

SECTION 1724. SILICONE RESINS AND MATERIALS (sec. 808 of House bill)

Present law

Silicones are classified in one of nine categories with duties ranging from zero to 8.6 percent ad valorem. Silicone resins enter under one of seven categories with column 1 duties ranging from duty-free to 13.5 percent ad valorem.

House bill

The House bill creates a single TSUS item for silicone products and applies a rate of duty of 3.7 percent ad valorem.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment, revising the duty rate to 3.0 percent ad valorem, to make this provision revenue neutral.

SUBPART B—TEMPORARY CHANGES IN TARIFF TREATMENT

SECTION 1736. CERTAIN KNITWEAR FABRICATED IN GUAM (sec. 829 of House bill; sec. 826 of Senate amendment)

Present law

Due to rules of origin for textiles issued by the Customs Service, full-fashioned sweaters joined from preshaped parts are treated as a product of the country of origin of the component part.

House bill

The House bill continues duty-free treatment of this item by suspending the duty on sweaters from Guam assembled from preshaped parts within guidelines of headnote 3(a) and within quota levels through October 31, 1992.

Senate amendment

The Senate amendment is substantially identical to the House bill.

Conference agreement

The House recedes.

SECTION 1745. FLUAZIFOP-P-BUTYL (sec. 854 of House bill; sec. 836 of Senate amendment)

Present law

Imports of fluazifop-p-butyl (or Butyl (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl] oxy]phenoxy]propanoate enter under TSUS item 408.23, with a column 1 rate of 13.5 percent ad valorem.

House bill

The House bill suspends the duty on fluazifop-p-butyl through December 31, 1990. There is an error in referencing TSUS item 405.23 instead of TSUS 408.23.

Senate amendment

The Senate amendment is identical to the House bill, except corrects the technical error.

Conference agreement

The House recedes.

SECTION 1746. PARTS OF CERTAIN PHOTOCOPYING MACHINES (sec. 865 of House bill; sec. 837 of Senate amendment)

Present law

Imports of parts for indirect-process electrostatic photocopying machines enter under TSUS item 676.56, with a column 1 duty rate of 3.9 percent ad valorem.

House bill

The House bill suspends the column 1 rates of duty for parts for indirect-process electrostatic photocopiers provided for in TSUS item 676.56 through December 31, 1990.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The Senate recedes with an amendment to exclude photoreceptors or assemblies containing photoreceptors from the coverage of the provision.

SECTION 1747. LITHOTRIPTERS—NONPROFIT ORGANIZATIONS (sec. 866 of House bill; sec. 838 of Senate amendment)

Present law

Nonprofit organizations import extracorporeal shock wave lithotripters under TSUS item 709.15 with a column 1 rate of 7.9 percent ad valorem.

House bill

The House bill suspends the column 1 duty rates on extracorporeal shock wave lithotripters as provided for in TSUS items 709.15 and 709.17 for non-profit organizations between December 31, 1982, and December 31, 1987.

Senate amendment

The Senate amendment is identical to the House bill, except refers only to TSUS item 709.17.

Conference agreement

The House recedes.

SECTION 1750. 1-(3-SULFOPROPYL)-PYRIDINIUM HYDROXIDE (sec. 839 of House bill; sec. 841 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 406.42) is 13.5 percent ad valorem.

House bill

The House bill suspends the column 1 duty through December 31, 1990.

Senate amendment

The Senate amendment is substantially identical to the House bill.

Conference agreement

The House recedes.

SECTION 1752. METHYLENE BLUE (sec. 830 of House bill; sec. 843 of Senate amendment)

Present law

The column 1 duty rate for Methylene Blue (TSUS item 409.74) is 20 percent ad valorem.

House bill

The House bill suspends the column 1 duty through December 31, 1990.

Senate amendment

The Senate amendment contains an end use provision which requires the chemical "to be used as a process stabilizer in the manufacture of organic chemicals."

Conference agreement

The Senate recedes.

SECTION 1756. JACQUARD CARDS AND JACQUARD HEADS (sec. 864 of House bill; sec. 848 of Senate amendment)

Present law

Imports of jacquard cards enter under item 670.56, with a column 1 rate of 7 percent ad valorem.

House bill

The House bill suspends the duty on jacquard cards through December 31, 1990.

Senate amendment

The Senate amendment is substantially the same as the House bill, except suspends, in addition, duty on jacquard heads through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1760. MANEB, ZINEB, MANCOZEB, AND METIRAM (sec. 844 of House bill; sec. 852 of Senate amendment)

Present law

The column 1 duty rate for these chemicals (TSUS item 432.15) is 3.7 percent ad valorem but not less than the highest rate applicable to any component material.

House bill

The House bill suspends the column 1 duty through December 31, 1990.

Senate amendment

The Senate amendment is substantially identical to the House bill, except for technical differences in tariff nomenclature.

Conference agreement

The Senate recedes.

SECTION 1761. METALDEHYDE (sec. 858 of House bill; sec. 853 of Senate amendment)

Present law

The column 1 duty rate for Methaldehyde (TSUS item 427.58) is 5.6 percent ad valorem.

House bill

The House bill suspends the column 1 rate through December 31, 1990.

Senate amendment

The Senate amendment is substantially identical to the House bill.

Conference agreement

The House recedes.

SECTION 1762. PARALDEHYDE (U.S.P.) (sec. 861 of House bill; sec. 854 of Senate amendment)

Present law

The column 1 duty rate for Paraldehyde (U.S.P.), (TSUS 439.50), is 3.7 percent ad valorem.

House bill

The House bill suspends the column 1 rate through December 31, 1990.

Senate amendment

The Senate amendment is identical to the House bill, except for technical differences in tariff nomenclature.

Conference agreement

The House recedes.

SECTION 1765. BENZENOID DYE INTERMEDIATES (sec. 857 of Senate amendment)

Present law

The column 1 duty rate ranges from 5.8 percent to 20 percent ad valorem on these 12 benzenoid dye intermediates.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1766. TUNGSTEN ORE (sec. 834 of House bill; sec. 858 of Senate amendment)

Present law

The column 1 duty rate for tungsten ore (TSUS item 601.54) is 17 cents per pound on tungsten content.

House bill

The House bill suspends the column 1 duty rate through December 31, 1990.

Senate amendment

The Senate amendment is substantially identical to the House bill.

Conference agreement

The House recedes.

SECTION 1767. CHLOR AMINO BASE (sec. 849 of House bill; sec. 859 of Senate amendment)

Present law

Imports of chlor amino base (or 4-chloro-2,5-dimethoxy-aniline) enter under TSUS item 405.01, with a column 1 duty rate of 6.1 percent ad valorem.

House bill

The House bill suspends the column 1 duty rate on chlor amino base through December 31, 1990.

Senate amendment

The Senate amendment is identical to the House bill, except retroactive to December 31, 1985.

Conference agreement

The Senate recedes.

SECTION 1768. NITRO SULFON B (sec. 851 of House bill; sec. 860 of Senate amendment)

Present law

Imports of nitro sulfon B (or 3-nitrophenyl-4-beta-hydroxy-sulfone) enter under TSUS item 406.00, with a column 1 duty rate of 6.7 percent ad valorem.

House bill

The House bill suspends the column 1 duty rate on nitro sulfon B through December 31, 1990.

Senate amendment

The Senate amendment is substantially identical to the House bill, except retroactive to December 31, 1985.

Conference agreement

The House recedes with an amendment deleting the retroactivity clause.

SECTION 1769. 4-CHLORO-2-NITRO ANILINE (sec. 861 of Senate amendment)

Present law

The column 1 duty rate for 4-chloro-2-nitro aniline (TSUS item 404.88) is 1.1 cents per pound plus 18.8 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990, retroactive to December 31, 1986.

Conference agreement

The House recedes with an amendment deleting the retroactivity clause.

SECTION 1770. AMINO SULFON BR (sec. 862 of Senate amendment)

Present law

The column 1 duty rate for amino sulfon br (TSUS item 406.00) is 6.7 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 duty rate through December 31, 1990, retroactive to December 31, 1986.

Conference agreement

The House recedes with an amendment deleting the retroactivity clause.

SECTION 1771. ACET QUINONE BASE (sec. 863 of Senate amendment)

Present law

The column 1 duty rate for acet quinone base (TSUS item 405.34) is 13.5 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 duty rate through December 31, 1990, retroactive to December 31, 1986.

Conference agreement

The House recedes with an amendment deleting the retroactivity clause.

SECTION 1772. DIAMINO PHENETOLE SULFATE (sec. 864 of Senate amendment)

Present law

The column 1 duty rate for diamino phenetole sulfate (TSUS item 405.09) is 13.5 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 duty rate through December 31, 1990, retroactive to December 31, 1986.

Conference agreement

The House recedes with an amendment deleting the retroactivity clause.

SECTION 1773. CERTAIN MIXTURES OF POLYACRYLATE POLYMERS (sec. 859 of House bill; sec. 865 of Senate amendment)

Present law

Absorbent chemical materials of one or more cross-linked sodium polyacrylate polymers are classifiable under item 430.20, with a column 1 rate of 3.7 percent ad valorem, but not less than the highest rate applicable to any component compound.

House bill

The House bill suspends the duty on this material through Oct. 31, 1987, and provides for duty-free treatment retroactive to July 1, 1985.

Senate amendment

The Senate amendment is substantially the same as the House bill, except it is retroactive to June 30, 1985, and has technical differences in tariff nomenclature.

Conference agreement

The House recedes with an amendment to clarify that the effective period for this provision is July 1, 1985, through October 31, 1987.

SECTION 1774. N-ETHYL-O-TOLUENESULFONAMIDE AND N-ETHYL-P-TOLUENESULFONAMIDE (sec. 867 of Senate amendment)

Present law

The column 1 rate of duty for these chemicals (TSUS item 409.34) is 0.1 cent per pound plus 17.7 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1777. ROSACHLORIDE LUMPS (sec. 873 of Senate amendment)

Present law

The column 1 rate of duty for rosachloride lumps (TSUS item 405.07) is 1.7 cents per pound plus 15.6 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1778. C-AMINES (sec. 874 of Senate amendment)

Present law

The column 1 rate of duty for c-amines (TSUS items 404.88 and 404.90) is 1.1 cents per pound plus 18.8 percent ad valorem, and 13.5 percent ad valorem, respectively.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1779. DIAMINO IMID SP (sec. 875 of Senate amendment)

Present law

The column 1 rate of duty for diamino imid sp (TSUS item 406.42) is 13.5 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1781. KITCHENWARE OF TRANSPARENT, NONGLAZED GLASS CERAMICS (sec. 878 of Senate amendment)

Present law

The column 1 duty rate for these products (TSUS item 534.97) is 6.9 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1989.

Conference agreement

The House recedes with amendments revising the expiration date to December 31, 1990, and revising the article descriptions to conform with the Harmonized System nomenclature as shown below:

"Kitchenware of glass-ceramics, nonglazed, greater than 75 percent by volume crystalline, containing lithium aluminosilicate, having a linear coefficient of expansion not exceeding 10 x 10 −7 per Kelvin within a temperature range of 0 degrees C to 300 degrees C, transparent, haze-free, exhibiting transmittances of infrared radiations in excess of 75 percent at a wavelength of 2.5 microns when measured on a sample 3mm in thickness, and containing beta-quartz solid solution as a predominant crystal phase (provided for in item 534.97, part 2C, schedule 5)."

SECTION 1782. HOSIERY KNITTING MACHINES AND NEEDLES (sec. 846 of House bill; secs. 879, 880, 893(a)(11), 893(a)(12) of Senate amendment)

Present law

Single cylinder fine gauge hosiery knitting machines and double cylinder jacquard hosiery knitting machines are dutiable at a column 1 rate of 4.4 percent ad valorem under TSUS item 670.16. Duty is suspended through September 30, 1985, under TSUS item 912.08.

Double cylinder hosiery knitting machines are dutiable under TSUS item 670.16 at a column 1 duty rate of 4.4 percent ad valorem.

Double headed latch needles are dutiable at a column 1 rate of 10 percent ad valorem in TSUS item 670.58. Duty is suspended through June 30, 1985, under TSUS item 912.09.

Latch needles are dutiable at a column 1 rate of 10 percent ad valorem under TSUS item 670.58. All other needles for knitting machines (but not including spring-beard needles under TSUS item 670.60) are dutiable at a column 1 rate of 23 cents per 1,000 and 8.2 percent ad valorem under TSUS item 670.62.

House bill

The House bill provides for duty-free treatment retroactive to September 30, 1985, under new TSUS item 912.29. TSUS item 912.08 is repealed.

It also suspends the column 1 duty rate through December 31, 1990, for all double cylinder hosiery machines provided for in TSUS item 670.16 under new TSUS item 912.29.

Additionally it provides for duty-free treatment retroactive to July 1, 1985, under new item 912.28. TSUS item 912.09 is repealed.

This bill suspends the column 1 duty rate through December 31, 1990, for needles provided for in TSUS items 670.58 and 670.62 under new TSUS item 912.28.

Senate amendment

The Senate amendment is identical in substance to the House bill.

Conference agreement

The Senate recedes.

SECTION 1783. CERTAIN BICYCLE PARTS (sec. 838 of House bill; sec. 881 of Senate amendment)

Present law

The column 1 duty rates range from 6 percent to 7.6 percent ad valorem. The duty on certain bicycle component parts is suspended through June 30, 1986.

Section 3 of the Foreign Trade Zones Act prohibits application of that Act to bicycle component parts through June 30, 1986, unless those parts are re-exported, either as parts or components of finished bicycles.

House bill

The bill modifies the description of certain bicycle component parts and extends the suspension under TSUS item 912.10 through December 31, 1990, on certain bicycle parts, retroactive to June 30, 1986.

It also extends the Foreign Trade Zones Act exception through December 31, 1990, retroactive to June 30, 1986.

Senate amendment

The Senate amendment is substantially the same as the House bill, except it makes technical corrections to appropriate item numbers for "cable or inner wire for caliper brakes and casing."

Conference agreement

The House recedes with a technical amendment which adds TSUS item numbers 771.55 and 772.65 in the reference provided for in "cable or inner wire for caliper brakes and casing."

This provision is not intended to bar the mere storage of imported bicycle parts or completed bicycles in foreign trade zones for later sale, distribution, manufacture, or assembly outside of the zone. Under existing law, customs duties on imported bicycles and bicycle parts may be deferred by storage in customs bonded warehouses, and it is not the intention of this provision to limit foreign trade zones' ability to offer equivalent advantages with respect to bicycles and bicycle parts.

The effective date for the duty suspension on bicycle tires and tubes was made retroactive to January 1, 1988.

SECTION 1785. TRIALLATE (sec. 884 of Senate amendment)

Present law

The column 1 duty rate for triallate (TSUS item 425.36) is 3.7 percent ad valorem and the column 2 duty rate is 25 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1786. M-NITRO-P-ANISIDINE (sec. 885 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 405.09) is 13.5 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes with technical corrections.

SECTION 1787(a). DINOCAP (sec. 841 of House bill; sec. 832(c) of Senate amendment)

Present law

Dinocap is classified in TSUS item 408.16 at a column 1 duty rate of 11.1 percent ad valorem and in TSUS item 408.38 at a column 1 rate of 0.8 cents per pound plus 9.7 percent ad valorem.

House bill

The House bill suspends the column 1 duty through December 31, 1990.

Senate amendment

The Senate amendment is substantially identical to the House bill, except for technical differences in tariff nomenclature.

Conference agreement

The House recedes with a technical amendment to tariff nomenclature.

SECTION 1787(b). MANCOZEB, DINOCAP, STABILIZER AND APPLICATION ADJUVANTS (sec. 841 of House bill; sec. 869 of Senate amendment)

Present law

These chemicals are subject to a column 1 duty rate of 0.8 cents per pound plus 9.7 percent ad valorem under TSUS item 408.38.

House bill

The House bill suspends the column 1 duty through December 31, 1990.

Senate amendment

The Senate amendment is substantially identical to the House bill, except for technical differences in tariff nomenclature.

Conference agreement

The Senate recedes.

SECTION 1788. M-NITRO-O-ANISIDINE (sec. 887 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 405.07) is 1.7 cents per pound plus 15.6 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1789. P-NITRO-ORTHO-TOLUIDINE (sec. 888 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 404.88) is 1.1 cents per pound plus 18.8 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1790. PHENYLCARBETHOXYPYRAZOLONE (sec. 889 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 406.39) is 1.7 cents per pound plus 16.2 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1791. P-NITRO-O-ANISIDINE (sec. 890 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 405.07) is 1.7 cents per pound plus 15.6 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1792. CARBODIIMIDES (sec. 891 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 405.53) is 15 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1793. TRIETHYLENE GLYCOL DICHLORIDE (sec. 892 of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 428.47) is 12.3 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1794. MIXTURES OF 5-CHLORO-2-METHYL-4-ISOTHIAZOLIN-3-ONE, 2-METHYL-4-ISOTHIAZOLIN-3-ONE, MAGNESIUM CHLORIDE, STABILIZERS AND APPLICATION ADJUVANTS (sec. 892A of Senate amendment)

Present law

The column 1 duty rate for this product (TSUS item 432.28) is 3.7 percent ad valorem but not less than the highest rate applicable to any component material.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1795. 2-N-OCTYL-4-ISOTHIAZOLIN-3-ONE, AND MIXTURES OF 2-N-OCTYL-4-ISOTHIAZOLIN-3-ONE AND APPLICATION ADJUVANTS (sec. 892B of Senate amendment)

Present law

The column 1 duty rate for this product is 7.9 percent ad valorem under TSUS item 425.52 and 3.7 percent ad valorem, but not less than the highest rate applicable to any component compound under TSUS item 430.20.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1796. WEAVING MACHINES FOR FABRICS IN EXCESS OF 16 FEET WIDTH (sec. 892E of Senate amendment)

Present law

The column 1 duty rate for these machines (TSUS items 670.14 and 670.74) is 4.7 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1797. BARBITURIC ACID (sec. 892F of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 437.36) is 5 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1798. 3-METHYL-5-PYRAZOLONE (sec. 892G of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS 425.52) is 7.9 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1799. 3-METHYL-1-(P-TOLYL)-2-PYRAZOLIN-5-ONE (P-TOLYL METHYL PYRAZOLONE) (sec. 892H of Senate amendment)

Present law

The column 1 duty rate for this chemical (TSUS item 406.36) is 5.8 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1800. CERTAIN OFFSET PRINTING PRESSES OF THE SHEET-FED TYPE WEIGHING 3,500 POUNDS OR MORE (sec. 863 of House bill)

Present law

Imports of the printing presses specified enter under TSUS item 668.21, with a column 2 rate of 25 percent ad valorem. Parts are dutiable at the same rate under TSUS item 668.50.

House bill

The House bill reduces the column 2 rate for TSUS item 668.21 to 10 percent ad valorem through December 31, 1990.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

SECTION 1801. FROZEN CRANBERRIES (sec. 883 of Senate amendment)

Present law

The column 1 duty rate for frozen cranberries (TSUS item 146.71) is 6 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1802. M-HYDROXYBENZOIC ACID (sec. 892C of Senate amendment)

Present law

The column 1 duty rate for this product (TSUS item 404.40) is 5.8 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1803. CERTAIN BENZENOID CHEMICALS (sec. 810 of Senate amendment)

Present law

The subject chemicals are classified under TSUS item 405.09 (column 1 duty rate of 13.5 percent ad valorem and a column 2 duty rate of 7 cents per pound plus 50 percent ad valorem).

House bill

No provision.

Senate amendment

The Senate amendment reclassifies 10 specific chemicals; 5 chemicals under TSUS item 404.84 and 5 under TSUS item 404.92. The column 1 rate is 5.8 percent ad valorem for both and column 2 rates are 7 cents per pound plus 39.5 percent ad valorem and 7 cents per pound plus 39 percent ad valorem, respectively. Also, it removes two chemicals from the existing item classification but does not reclassify them.

Conference agreement

The House recedes, with an amendment to substitute a temporary duty suspension until December 31, 1990, on the products covered in the Senate amendment in lieu of reclassification.

SECTION 1804(a)(5). ETHYLBIPHENYL ISOMER MIXTURE (sec. 869(7) of House bill; sec. 893(a)(6) of Senate amendment)

Present law

Imports of mixtures of 3-ethylbiphenyl and 4-ethylbiphenyl enter under TSUS item 407.19, with a column 1 rate of 1.7 cents/lb. plus 13.6 percent ad valorem, but not less than the highest rate applicable to any com-

ponent material. Duty on these mixtures is temporarily suspended through June 30, 1985.

House bill

The House bill reinstates suspension of column 1 duty on these mixtures retroactive to June 30, 1985, through December 31, 1990. There is a typographical error in the word "isomeric."

Senate amendment

The Senate amendment is identical to the House bill, except it corrects the typographical error.

Conference agreement

The House recedes.

SECTION 1804(a)(10). CERTAIN SMALL TOYS AND JEWELRY (sec. 869(12) of House bill; sec. 893(a)(13) of Senate amendment)

Present law

Duties on small toys (except balloons, marbles, dice, and diecast vehicles) provided for in schedule 7, subparts 5D and 5E, valued not over 5 cents per unit; and jewelry (except parts) provided for in schedule 7, subpart 6A, valued not over 1.6 cents per piece, are temporarily suspended TSUS (item 912.20, expires December 31, 1986).

House bill

The House bill reinstates the duty-free treatment of these articles through December 31, 1990, retroactive to December 31, 1986.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The Senate recedes. In adopting this provision, the conferees recognize that the scope of this provision is not limited to toys for bulk vending machines and that the subject articles consist of a variety of small items such as small or miniature playing cards, puzzles, games, etc.

SECTION 1804(b)(1). CRUDE FEATHERS AND DOWN (sec. 869(15) of House bill; sec. 893(b)(1) of Senate amendment)

Present law

The column 1 duty rate of 7.5 percent ad valorem for crude feathers and down (TSUS items 903.70 and 903.80) is suspended through December 31, 1987.

House bill

The House bill reinstates suspension through December 31, 1990.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The Senate recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(2). DISPOSABLE SURGICAL GOWNS (sec. 893(c) of Senate amendment)

Present law

The duty on these products (TSUS item 905.50) is temporarily suspended through December 31, 1988.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1804(b)(3). DIPHENYLGUANIDINE AND DI-ORTHO-TOLYLGUANIDINE (sec. 866 of Senate amendment)

Present law

The duty on these chemicals is temporarily suspended through December 31, 1987, under TSUS item 906.50.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 duty rate under new TSUS item number 908.06 through December 31, 1990.

Conference agreement

The House recedes with an amendment to retain the existing TSUS item number, 906.50, and to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(4). M-TOLUIC ACID (sec. 893(b)(6) of Senate amendment)

Present law

The duty on m-toluic acid (TSUS item 906.57) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(5). MENTHOL FEEDSTOCKS (sec. 869(6) of House bill; sec. 893(b)(2) of Senate amendment)

Present law

The column 1 duty rate on menthol feedstocks (TSUS 407.19–crude mixtures of optical isomers of menthol) is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. Menthol feedstocks receive temporary duty-free treatment under TSUS item 907.13 through December 31, 1987.

House bill

The House bill continues current duty suspension through December 31, 1990.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The Senate recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(6). SULFATHIAZOLE (sec. 899C of Senate amendment)

Present law

The duty on this chemical (TSUS item 907.19) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(7). FLECAINIDE ACETATE (sec. 893(b)(3) of Senate amendment)

Present law

The duty on flecainide acetate (TSUS item 907.21) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(8). O-BENZYL-P-CHLOROPHENOL (sec. 893(b)(4) of Senate amendment)

Present law

The duty on this chemical (TSUS item 907.23) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(9). B-NAPHTHOL (sec. 870 of Senate amendment)

Present law

The duty for B-Naphthol is temporarily suspended through December 31, 1987, under TSUS item 907.31.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 duty rate under new TSUS item 908.10 through December 31, 1990.

Conference agreement

The House recedes with an amendment to retain the existing TSUS item number (907.31) and to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(10). TETRAAMINOBIPHENYL (sec. 877 of Senate amendment)

Present law

Duty on tetraaminobiphenyl is temporarily suspended through December 31, 1988, under item TSUS 907.32.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990, under new TSUS item 908.13.

Conference agreement

The House recedes with an amendment to retain the existing TSUS item number (907.32).

SECTION 1804(b)(11). ACETYLSULFAGUANIDINE (sec. 899C of Senate amendment)

Present law

The duty on this chemical (TSUS item 907.33) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(12). 6-AMINO-1-NAPHTHOL-3-SULFONIC ACID (sec. 868 of Senate amendment)

Present law

The duty for this chemical is temporarily suspended through December 31, 1987, under TSUS item 907.34.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty under new TSUS item 908.08 through December 31, 1990.

Conference agreement

The House recedes with an amendment to retain the existing TSUS item number 907.34, and to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(13). 2-(4-AMINOPHENYL)-6- METHYLBENZO-THIAZOLE-7-SULFONIC ACID (sec. 893(b)(5) of Senate amendment)

Present law

The duty on this chemical (TSUS item 907.35) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(14). SULFAMETHAZINE (sec. 899C of Senate amendment)

Present law

The duty on this chemical (TSUS item 907.36) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(15). SULFAGUANIDINE (sec. 899C of Senate amendment)

Present law

The duty on this chemical (TSUS item 907.37) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(16). SULFAQUINOXALINE AND SULFANILAMIDE (sec. 899C of Senate amendment)

Present law

The duty on these chemicals (TSUS item 907.38) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(17). NICOTINE RESINS (sec. 845 of House bill; sec. 833 of Senate amendment)

Present law

The duty is temporarily suspended for nicotine resin complex (TSUS item 907.63) in the form of chewing gum through December 31, 1987.

House bill

The House bill clarifies the definition of nicotine resin complex to include measured doses in chewing gum form and extends the suspension of duty through December 31, 1990. This provision would apply retroactively to November 14, 1984.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The Senate recedes with amendments to allow for duty-free treatment retroactive to December 31, 1987, and to drop the change in the article description of the tariff item because this change was already made in the Tax Reform Act of 1986.

SECTION 1804(b)(18). IRON-DEXTRAN COMPLEX (sec. 899C of Senate amendment)

Present law

The duty on this chemical (TSUS item 907.79) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with amendments to allow for duty-free treatment retroactive to December 31, 1987, and to correct a typographical error.

SECTION 1804(b)(19). NATURAL GRAPHITE (sec. 893(b)(7) of Senate amendment)

Present law

The duty on natural graphite (TSUS item 909.01) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(20). CERTAIN NARROW WEAVING MACHINES (sec. 893(b)(8) of Senate amendment)

Present law

The duty on these machines (TSUS item 912.04) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes with anp amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(21). CERTAIN LACE-BRAIDING MACHINES (sec. 893(b)(9) of Senate amendment)

Present law

The duty on these machines (TSUS item 912.11) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes wiqth an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1804(b)(22). CERTAIN HOVERCRAFT SKIRTS (sec. 893(b)(10) of Senate amendment)

Present law

The duty on these products (TSUS item 905.40) is temporarily suspended through December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment extends the duty suspension through December 31, 1990.

Conference agreement

The House recedes.

SECTION 1804(b)(23). 5-CHLORO-2-METHYL-4-ISOTHIAZOLIN-3-ONE, 2-METHYL-4-ISOTHIAZOLIN-3-ONE, MAGNESIUM CHLORIDE AND MAGNESIUM NITRATE (sec. 892D of Senate amendment)

Present law

The column 1 duty rate for this product (TSUS item 906.52) is temporarily suspended until December 31, 1987.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The House recedes with an amendment to allow for duty-free treatment retroactive to December 31, 1987.

SECTION 1831. EFFECTIVE DATES (sec. 816 and 870 of House bill; sec. 894 of Senate amendment)

Present law

No provision.

House bill

The House bill specifies dates for retroactive application of tariff provisions and

allows 180 days to file with Customs for duty rebate.

Senate amendment

The Senate amendment is substantially the same as the House bill except it allows a 90-day filing period.

Conference agreement

The Senate recedes, with an amendment to revise the effective date for the tariff-related provisions to October 1, 1988.

All new duty suspensions will become effective on that date, while all provisions with retroactive duty suspensions may be refunded by the Customs Service on or after that date.

The purpose of changing the effective dates is to avoid a revenue loss in fiscal year 1988, which would result in violation of the revenue floor in the Budget Resolution.

SECTION 1844. CERTAIN EXTRACORPOREAL SHOCK WAVE LITHOTRIPTER IMPORTED FOR USE IN HAWAII (sec. 899D of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides duty-free treatment to all lithotripters imported in October 1986 for use in Hawaii.

Conference agreement

The House recedes.

SECTION 1845. EXTENSION OF THE FILING PERIOD FOR RELIQUIDATION OF CERTAIN ENTRIES (sec. 896 of Senate amendment)

Present law

Section 308 of the Trade and Tariff Act of 1984 was intended to provide for duty suspension on transistors. A typographical error in the TSUS item number (587.70 instead of 687.70) prevented the intended duty suspension. Legislation was passed on October 22, 1986, to correct the technical error and provide for duty rebate if application was made within 90 days.

House bill

No provision.

Senate amendment

The Senate amendment permits retroactive duty-free treatment on transistors imported between March 1, 1985, and November 6, 1986, to allow importers who missed the filing deadline to receive a rebate of duties paid.

Conference agreement

The House recedes.

DUTY SUSPENSIONS NOT INCLUDED IN THE CONFERENCE AGREEMENT

URANIUM HEXAFLUORIDE (UF6) (sec. 813 of House bill)

Present law

Uranium compounds other than oxide enter under TSUS item 422.52 and are duty-free.

House bill

The House bill adds new tariff provisions for uranium hexafluoride (UF_6) that is imported from any country requiring that uranium mined in that country be converted or upgraded into UF_6 before export and provides for a duty of $3 per pound under both column 1 and column 2. Currently, Canada is the only country that meets this criteria.

Senate amendment

No provision.

Conference agreement

The House recedes—Provision is deleted.

CERTAIN PLASTIC WEB SHEETING (sec. 839(b) of Senate amendment)

Present law

The column 1 rate of duty for such web sheeting (TSUS item 355.25) is 12.5 percent ad valorem and the column 2 rate is 74 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 and column 2 rates of duty through December 31, 1990.

Conference agreement

The Senate recedes—Provision is deleted.

MALONONITRILE (sec. 856 of House bill)

Present law

Column 1 imports of malononitrile are duty-free under TSUS item 425.42.

House bill

The House bill suspends the column 1 duty rate through December 31, 1990.

Senate amendment

No provision.

Conference agreement

The House recedes—Provision is deleted.

1,5 NAPHTHALENE DIISOCYANATE (sec. 844 of Senate amendment)

Present law

The column 1 duty rate for 1,5 naphthalene diisocyanate (TSUS item 405.82) is 13.5 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment suspends the column 1 rate of duty through December 31, 1990.

Conference agreement

The Senate recedes—Provision is deleted.

SUGAR DRAWBACK (sec. 875 of House bill; sec. 897 of Senate amendment)

Present law

In order to qualify for drawback (refund) of import duties, articles produced in the United States from imported goods must be processed within 3 years, and exported within 5 years, of importation.

House bill

The House bill allows drawback (refund) of import duties and section 22 fees (sec. 22 of the Agricultural Adjustment Act, as amended) paid on raw sugar imported from November 1, 1977, to March 31, 1985, provided that production and export of the refined sugar or sugar-containing products occurs before October 1, 1991. The export period extends through the current expiration date of the domestic price-support program for sugar.

The Secretary of Agriculture, in conjunction with the Commissioner of Customs, shall study and report back to the Committees on Ways and Means and Finance by June 30, 1988, with respect to circumvention of the United States sugar quota through the importation of refined sugar in the form of blended products. The report shall address the severity of the problem, or lack thereof, and suggest concrete steps, as necessary, to prevent such circumvention.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The conferees agreed to strike the House provision and the Senate amendment, and retain the present law.

ADMINISTRATIVE PROCEDURES FOR NONCONTROVERSIAL TARIFF SUSPENSIONS (secs. 941-944 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

Provides for administrative procedures to temporarily suspend duties on the importation of products and runs parallel to current legislative procedure. The ITC receives petitions, investigates, provides opportunity for public comment, and reports findings. The ITC report is reviewed by the Trade Policy Staff Committee and a recommendation is proposed to the President. The President may only suspend the duties on the article if there is no U.S. person who would be adversely affected by the suspension. The revenue loss from the aggregate of these suspensions may not exceed $100 million annually.

Conference agreement

The Senate recedes—Provision is deleted.

SUBTITLE H—MISCELLANEOUS CUSTOMS, TRADE AND OTHER PROVISIONS

PART I—CUSTOMS PROVISIONS

SECTION 1902. TARE ON CRUDE OIL AND PETROLEUM PRODUCTS (sec. 926 of Senate amendment)

Present law

The U.S. Customs Service regulations (19 CFR 151.46) provide for an allowance for amounts of water and sediment in excess of 0.3 percent of cargo volume for crude oil imports and in excess of up to 0.5 percent water and sediment for petroleum product imports.

House bill

No provision.

Senate amendment

The Senate amendment amends section 507 of the Tariff Act of 1930 (19 U.S.C. 1507) to provide allowance for *all* detectable moisture and impurities in determining tare on importing crude oil and petroleum products.

Conference agreement

The House recedes.

SECTION 1903. GSP TREATMENT OF WATCHES (sec. 192 of House bill; sec. 927 of Senate amendment)

Present law

Watches are listed as articles which may not be designated as eligible for GSP.

House bill

The House bill states that watches would remain ineligible for GSP except those watches which, if given preferential treatment, will not cause material injury to the watch manufacturing and assembly operations in the United States and U.S. insular possessions.

Senate amendment

The Senate amendment is substantially the same as the House bill, except it applies to watches entered after June 30, 1989, and includes, in addition, watch bands, straps, and bracelet manufacturing operations.

Conference agreement

The House recedes.

SECTION 1905. CUSTOMS SERVICES AT PONTIAC/OAKLAND, MICHIGAN, AIRPORT (sec. 878 of House bill; sec. 930 of Senate amendment)

Present law

The Trade and Tariff Act of 1984 provides for certain small airports to have customs services available for a user fee.

House bill

The House bill adds the Pontiac/Oakland, Michigan, airport to the list of airports to receive customs services for a user fee.

It also eliminates the maximum number of airports that can be designated for service on a fully reimbursable basis.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The House recedes.

SECTION 1906. PROHIBITION ON IMPORTATION OF CERTAIN ARTICLES PRODUCED BY CONVICT OR FORCED LABOR IN THE SOVIET UNION (sec. 880 of House bill; sec. 925 of Senate amendment)

Present law

Section 307 of Tariff Act of 1930 provides that goods produced abroad by convict labor, forced labor, or indentured labor under penal sanctions are not entitled to entry at any port of the United States.

House bill

The House bill includes a Sense of the Congress provision requesting the President to instruct the Secretary of the Treasury to enforce section 307.

Senate amendment

The Senate amendment precludes the importation of 7 specific items (gold ore, agriculture machinery, tractor generators, tea, crude petroleum, motor fuel, and kerosene) from the Soviet Union because they have been produced by convict or forced labor.

It states that importation of any of these articles may be allowed after the President certifies to the Congress in writing that (1) information clearly shows the article is not being produced with forced labor, or (2) the prohibition on importation directly affects U.S. national security interests.

Conference agreement

The Senate recedes.

SECTION 1907(a). COUNTRY OF ORIGIN MARKING (sec. 873(a) of House bill)

Present law

Section 304(h) of the Tariff Act (19 U.S.C. 1304) provides for a fine of not more than $5000, or imprisonment of not more than one year upon conviction for any person who "with intent to conceal" alters or removes the country of origin marking required under the statutes.

House bill

The House bill increases the maximum fine for intentional alteration or removal of country of origin markings to $100,000 on the first offense and $250,000 for subsequent offenses.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

SECTION 1907(c). MARKING OF NATIVE AMERICAN STYLE JEWELRY AND ARTS AND CRAFTS (sec. 879 of House bill; sec. 938 of Senate amendment)

Present law

Section 304 of the Tariff Act of 1930 requires that all imported articles be marked legibly and permanently with the name of the country of origin.

House bill

The House bill provides for immediate implementation of the proposed Customs Service rule published in the Federal Register on July 15, 1986, regarding marking of Native American style jewelry.

Senate amendment

The Senate amendment states that Native American style jewelry and arts and crafts may be considered to be in compliance with the requirements of section 304 only if the English name of the country of origin of such jewelry and arts and crafts is indelibly marked in a conspicuous place on such jewelry and arts and crafts by means of cutting, die-sinking, engraving, stamping, raised lettering, or other equally permanent method of marking.

It also provides that, for purposes of implementing this section, the Secretary of the Treasury shall, upon enactment, use the proposed rule on Native American style jewelry published on July 15, 1986, or any similar rule. To implement the section with regard to arts and crafts, the Secretary is directed to use a similar rule published in final form within a year of the date of enactment.

Conference agreement

The Senate recedes, with an amendment adding arts and crafts to the coverage of the provision and requiring the Customs Service to adopt appropriate regulations to the greatest extent feasible. The conferees expect that these rules will be implemented as soon as possible, but no later than one year from the date of enactment of this bill.

SECTION 1908. DUTY-FREE SALES ENTERPRISES (sec. 921 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment amends section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) to provide for statutory and regulatory control of duty-free enterprises, requiring the Customs Service to establish, by regulation, a separate class of bonded warehouses for duty-free enterprises. Specific provisions of the amendment are:

(1) A duty-free shop may be located within the same port of entry from which a purchaser of duty-free merchandise leaves the U.S. customs territory, or within 25 miles from the purchaser's exit point.

(2) Each duty-free shop—

(a) is required to establish procedures to provide reasonable assurance that duty-free goods will be exported;

(b) if located in an airport store, is required to establish and enforce, under Customs Service guidelines, restrictions on the sale of duty-free goods to individuals to personal use quantities;

(c) is required to display in prominent places notices that the merchandise has not been subject to any Federal duty or tax, must be declared and is subject to duty and tax if brought back into U.S. customs territory, and is subject to customs laws and regulations of any foreign country to which it is taken (it is not required, however, that goods be marked as duty-free);

(d) is permitted to unpack merchandise into saleable units after it is entered for warehouse and placed in a duty-free sales enterprise, without further permits;

(e) in the case of a shop located in an airport, is required to deliver the duty-free goods to the purchaser in an area in the airport to which access is restricted to persons leaving the customs territory, at the exit point of a specific departing flight, by placing the goods on the aircraft as baggage, or, if unable in good faith to make delivery by one of the specifically prescribed methods, by any other reasonable method; and

(f) in the case of a border store, required to deliver the goods at a merchandise storage location at or beyond the exit point or at any location approved by Customs before the enactment of this bill.

(3) If State or local regulation requires that a duty-free shop obtain a concession or other form of approval in order to do business in an airport, seaport or other exit facility, the operator must demonstrate to Customs that the approval has been obtained before any merchandise incident to the operation may be withdrawn from a bonded warehouse and transferred to or through the facility.

(4) No duty-free shop is prohibited from also selling non-duty-free goods, as long as those goods are not stored in a bonded warehouse facility other than a facility used for retail sales.

(5) Merchandise sold in a duty-free shop is ineligible for duty exemption under schedule 8 of the Tariff Schedules if it is brought back into the U.S. customs territory.

Conference agreement

The House recedes with the following three amendments:

(1) Amending 19 U.S.C. 1555(b)(3)(B) by deleting the word "guidelines" and inserting the word "regulations" in its stead.

(2) Amending 19 U.S.C. 1555(b)(3)(D) with a statement allowing the addition of a specific marking or identifier where a pattern of reimportation of duty-free merchandise without declarations is found.

This amendment creates a limited exception to the general prohibition on any requirement that duty-free stores mark their merchandise to indicate that it was sold in a duty-free store. It authorizes the Secretary, in particular circumstances, to require a duty-free store to apply an inconspicuous mark or distinguishing identifier on certain of its merchandise. Before imposing such a requirement, the Secretary must find that a pattern or practice exists involving the reimportation of duty-free merchandise without declar ation, occurring over a significant period of time. It is not intended that episodic or occasional instances would constitute a pattern or practice.

It is intended that the Secretary shall solicit the views of the operators who would be affected by any marking requirement in making the required determinations.

(3) Amending 19 U.S.C. 1555(b)(3)(F)(i)(IV) by deleting "delivery" and inserting "delivery for exportation" in its stead.

SECTION 1909. CARIBBEAN BASIN INITIATIVE

a. Sense of Congress/Findings (sec. 193(a) of House bill; sec. 953 of Senate amendment)

Present law

The Caribbean Economic Recovery Act, commonly known as the Caribbean Basin Initiative or CBI, was enacted on August 5, 1983, authorizing certain U.S. unilateral and preferential trade and tax measures for Caribbean Basin countries and territories.

House bill

The House bill sets forth a *Sense of the Congress* that the CBI should be preserved, that changes in U.S. laws should not unduly affect the CBI's unilateral duty-free system or discriminate against imports from CBI beneficiary countries; and that it is in the economic and security interests of the United States to maintain the commitment in the CBI.

Senate amendment

The Senate amendment sets forth findings regarding the economic and political importance of the Caribbean region to the U.S. and expresses concern that trade restrictions are undermining stability in the region. It expresses the *Intent of the Congress* to ensure a strengthening of the trade elements of the CBI and that trade law changes not unduly affect CBI's unilateral duty-free system or discriminate against CBI imports.

Conference agreement

The House recedes with an amendment deleting findings number 5 and number 6 in the Senate amendment.

b. Withdrawal of suspension of benefits (sec. 193(b) of House bill)

Present law

Section 212(e) of the CBI requires the President to withdraw or suspend the designation of any country as a beneficiary country if he determines as a result of changed circumstances such country would be barred from designation pursuant to the requirements in paragraph (b) of section 212.

House bill

The House bill amends section 212(e) to allow the President the option of withdrawing or suspending CBI benefits on individual articles in addition to complete withdrawal of beneficiary status if a country is found not to be fulfilling all of the requirements of section 212(b).

Senate amendment

No provision.

Conference agreement

The Senate recedes.

c. Extension of program (sec. 955 of Senate amendment)

Present law

Duty-free treatment under the CBI program was provided for a 12-year period and is scheduled to expire on September 30, 1995.

House bill

No provision.

Senate amendment

The Senate amendment extends the effective period for duty-free treatment under the CBI program to 12 years after the date of enactment of the "Omnibus Trade Act of 1987."

Conference agreement

The Senate recedes—Provision is deleted.

SECTION 1910. ETHYL ALCOHOL AND MIXTURES FOR FUEL USE (sec. 898 of Senate amendment)

Present law

Under the Tax Reform Act of 1986, specific Caribbean feedstock requirements were established in order for ethyl alcohol to receive duty-free treatment under the CBI program or from U.S. insular possessions. Under a "grandfather clause" several companies were entitled to continue receiving duty-free treatment irrespective of the feedstock requirement for a limited period of time.

House bill

No provision.

Senate amendment

The Senate amendment amends two of the grandfather provisions to (1) allow installation of facilities in a U.S. insular possession as well as a CBI beneficiary country and (2) extend the effective period for one company from one year to two years.

Conference agreement

The House recedes with an amendment adding a grandfather provision for two Caribbean-owned facilities; extending the grandfather period for all 5 eligible companies until December 31, 1989 and limiting the total imports eligible for duty-free treatment under the grandfather provisions to 20 million gallons per facility per calendar year. Further, the U.S. International Trade Commission and the General Accounting Office are directed to conduct comprehensive studies on the economics of ethanol production in the region and its potential impact on United States producers of ethanol, including a recommendation of appropriate and feasible domestic feedstock requirements to insure meaningful production and employment in the region and to discourage "pass-through operations."

In agreeing to temporary volume limitations on the duty-free entry of dehydrated ethanol from the Caribbean, the Conferees do not intend to establish any precedent for the restriction of Virgin Islands products into the United States under General Headnote 3(a) of the Tariff Schedule of the United States. The Conferees recognize that products of the Virgin Islands historically have been accorded unlimited access to the U.S. market under General Headnote 3(a) and reaffirm that, as an unincorporated territory of the United States, the Virgin Islands merits special consideration in the formulation of U.S. trade policy.

SECTION 1911. ENFORCEMENT OF RESTRICTIONS ON IMPORTS FROM CUBA (sec. 199 of House bill)

Present law

Imports from Cuba into the United States are prohibited.

House bill

The House bill requires the U.S. Trade Representative to request all relevant agencies to prepare appropriate recommendations for improving the enforcement of restrictions on Cuban imports.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

CUSTOMS PROVISIONS NOT INCLUDED IN THE CONFERENCE AGREEMENT

CUSTOMS USER FEES (sec. 924 of Senate amendment)

Present law

The Budget Reconciliation Act of 1986 requires that fees be placed in a dedicated account for expenditures for commercial operations of the Customs Service. Articles entering under TSUS item numbers 806.30 and 807.00 of the Tariff Schedules are not subject to payment of fees.

House bill

No provision.

Senate amendment

The Senate amendment makes the following amendments:

(1) Clarifies the language regarding the customs user fees by legislating that fees are to be treated as receipts offsetting expenditures of salaries and expenses for commercial operations and not as revenues.

(2) Prohibits the charging of fees for customs services provided in connection with the arrival or processing of any merchandise used within the boundaries of the International Peace Garden located between North Dakota and Manitoba, Canada.

(3) Makes subject to the merchandise user fee the portion of the value of any article described in TSUS items 806.30 and 807.00 of the Tariff Schedules that is subject to the imposition of duty.

The effective date of these amendments is October 1, 1988, with the exception of the Peace Garden provision (September 30, 1987).

Conference agreement

The Senate recedes - Provision is deleted.

CUSTOMS FORFEITURE FUND (sec. 874 of House bill)

Present law

In Public Law 98-573 a "Customs Forfeiture Fund" was established into which net proceeds from forfeitures would be deposited to be available to Customs, subject to appropriation, to pay designated expenses associated with seizure and forfeiture. This fund was inadvertently repealed by section 1152(b) of Public Law 99-570.

House bill

The House bill repeals section 1152(b) of Public Law 99-570 to clarify that the Customs Forfeiture Fund still exists.

Senate amendment

No provision.

Conference agreement

The House recedes, since this issue was corrected in the Supplemental Appropriation Act of 1987 (Public Law 100-71). However, the conferees agreed to make a technical correction to Public Law 98-573 to clarify that proceeds of forfeiture could be deposited into the Fund.

CUSTOMS FRAUD PROVISIONS

(a) SCOFFLAW PENALTIES FOR MULTIPLE CUSTOMS LAW OFFENDERS (sec. 872 of House bill)

Present law

The penalties applicable to persons who violate customs laws in importing merchandise are determined without regard to whether the party has previously been found in violation of such laws.

House bill

The House bill directs the Secretary of the Treasury to issue an order prohibiting for a 3-year period, any person, who over a

7-year period has either been convicted of, or assessed a civil penalty for, three separate violations of one or more customs laws finally determined to involve fraud or criminal culpability, from importing or engaging others to import any goods or services into the United States. Anyone who violates or knowingly aids or abets the violation of such an exclusion order shall be fined not more than $250,000 or imprisoned not more than 10 years, or both. The Secretary is required to prescribe rules to carry out this section.

Senate amendment

No provision.

Conference agreement

The House recedes—Provision is deleted.

CUSTOMS FRAUD PROVISIONS

(b) PRIVATE ACTIONS FOR CUSTOMS FRAUD (sec. 939 of Senate amendment)

Present law

Section 592 of the Tariff Act of 1930 sets forth penalties for violations of customs laws. No private right of action exists, however.

House bill

No provision.

Senate amendment

The Senate amendment creates a private right of action in the Court of International Trade for interested parties (manufacturers, producers, wholesalers, or trade or business associations of a like or competitive product) whose business or property is injured by any act of fraud or gross negligence that is prohibited under section 592(a). If successful, that party may recover damages for injuries sustained, including gross margin on his lost sales and impact on the market price from the fraudulent act as well as court costs, including attorney's fees. For fraud cases, the burden of proof is "clear and convincing evidence; for gross negligence cases, "preponderance of the evidence."

Conference agreement

The Senate recedes—Provision is deleted.

PART 2—MISCELLANEOUS TRADE PROVISIONS

SECTION 1931. TRADE STATISTICS (sec. 956 of Senate amendment)

Present law

Title 13 U.S.C. requires monthly reporting of U.S. merchandise trade statistics. Under section 301 of Title 13, the U.S. merchandise trade balance must be reported on the basis of the c.i.f. value of imports and the f.a.s. value of exports. Such balance must be released at least 48 hours before any trade balance based on any other statistics is released.

House bill

No provision.

Senate amendment

The Senate amendment eliminates the 48-hour release requirement for the trade balance based on the c.i.f. value of imports and the f.a.s. value of exports.

It also requires a Census Bureau study on the feasibility of developing and publishing an index to measure and report the real volume of U.S. merchandise trade on a monthly basis. A report on the study must be submitted to the Ways and Means and Finance Committees within one year after enactment.

Conference agreement

The House recedes.

SECTION 1932. ADJUSTMENT OF TRADE STATISTICS (sec. 978 of Senate amendment)

Present law

Title 13 U.S.C. requires monthly reporting of U.S. merchandise trade statistics.

House bill

No provision.

Senate amendment

The Senate amendment requires that the monthly and cumulative reports on the U.S. merchandise trade balance be reported on a constant dollar basis (i.e., adjusted for inflation or deflation), as well as on a current dollar basis.

Conference agreement

The House recedes.

SECTION 1933. COAL EXPORTS TO JAPAN (sec. 196 of House bill; sec. 981 of Senate amendment)

Present law

No provision.

House bill

The House bill expresses the sense of Congress that (1) the objectives of the November 1983 Joint Policy Statement on Energy Cooperation, with respect to U.S. coal exports to Japan have not been achieved; (2) the President should direct the USTR to negotiate an agreement under which Japan would import U.S. coal on a market share basis equivalent to Japan's market share of steel products exported to the United States; (3) the President should encourage increased Japanese purchases of U.S. steam coal; and (4) the President should report to Congress on the results of negotiations.

Senate amendment

The Senate amendment is similar to the House bill, except it provides that the President should direct that, in negotiating a steel trade arrangement with Japan, the USTR and Secretary of Commerce shall take into account the amount of coal that Japan purchases from the United States in determining the level of steel products that can be imported into the United States.

Conference agreement

The House recedes, with an amendment striking the reference to the Secretary of Commerce.

SECTION 1934. JAPANESE PURCHASES OF U.S. AUTO PARTS—SENSE OF CONGRESS (sec. 198 of House bill; sec. 948 of Senate amendment)

Present law

No provision.

House bill

The House bill expresses the sense of Congress that Congress strongly supports U.S. negotiators' efforts to expand opportunities for U.S. producers to supply auto parts for Japanese autos, wherever produced, and determines that success of the MOSS talks on auto parts will be measured by a significant increase in U.S. auto parts sales and the initiation of long-term relationships between U.S. and Japanese companies. It requires USTR and the Secretary of Commerce to report to Congress at the conclusion of the MOSS talks on the outcome of the talks and on any agreements reached with Japan.

Senate amendment

The Senate amendment is the same as the House bill, except that it refers to MOSS "negotiations," rather than talks.

Conference Agreement

The Senate recedes.

SECTION 1935. EFFECT OF IMPORTS ON CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE U.S. (sec. 909 of House bill)

Present law

No provision.

House bill

The House bill requires the Secretary of Energy to refer a recently completed study on the effects of oil imports on the national security of the United States to the Secretary of Commerce for review. Within 180 days of receipt, the Secretary of Commerce, based on the study, is required to recommend to Congress and the President appropriate actions to address any impacts of petroleum imports on U.S. petroleum exploration, production, and refining capacity.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

SECTION 1936. AUTO TRADE BARRIERS (sec. 961 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the USTR to investigate and report to Congress on auto-producing countries' barriers to auto imports and the impact of such barriers, both in the presence and absence of the U.S.-Japan voluntary restraint agreements, on diverting auto imports into the U.S. market.

Conference agreement

The Senate recedes, with a requirement that a one-time study on auto trade barriers be conducted and included in the annual report on foreign trade barriers submitted to Congress under section 181 of the Trade Act of 1974.

SECTION 1937. LAMB IMPORTS (sec. 951 of Senate amendment)

Present law

No provision. The Meat Import Act of 1979 provides for import quotas on total imports of beef, veal, mutton, and goat in accordance with a specified countercyclical formula.

House bill

No provision.

Senate amendment

The Senate amendment authorizes a new program of import quotas on a calendar year basis on imports of fresh, chilled, or frozen lamb meat.

The annual quota level is established by multiplying the base quantity of 24,540,000 pounds by (1) the average annual domestic commercial production of lamb during the most recent 3 years (including the current year) divided by the average annual domestic commercial production of lamb during the six-year period 1981-86; and then by (2) the average annual per capita domestic production of lamb during the most recent 5 years (including the current year) divided by the average annual per capita production of lamb during the most recent 2 years (including the current year).

The Secretary of Agriculture must estimate and publish, on a quarterly basis, (1) the annual adjusted quota, and (2) the estimated expected supply of lamb imports for that calendar year absent any restriction. If

the expected annual supply of imports equals 110 percent or more of the annual adjusted quota, quotas are triggered and the President must, by proclamation, limit imports of lamb for that calendar year to the amount of the annual adjusted quota. At no time, however, may the import quota be set at a level less than 28,500,000 pounds.

The President is authorized, subject to certain limitations, to suspend any proclamation made, or increase the total quantity of imports permitted, if the President determines any of the following:

(1) such action is required by overriding economic or national security interests, giving special weight to the importance of the economic well-being of the domestic lamb industry;

(2) the supply of lamb will be inadequate to meet domestic demand at reasonable prices; or

(3) trade agreements entered into after date of enactment ensure that the policy set forth in this section will be carried out.

Conference agreement

The Senate recedes with a substitute amendment that requires the ITC to monitor imports of lamb meat for 2 years beginning 15 days after date of enactment, and authorizes provisional relief in accordance with section 202 of the Trade Act (as amended by this Act) if a petition for import relief is filed and the ITC has monitored lamb imports for at least 90 days pursuant to this section. For purposes of any request for provisional relief under section 202(d) made during the 2-year period referred to in this section, the conferees intend that lamb meat shall be considered a perishable agricultural product. The ITC must, however, make an affirmative determination under section 202(d)(1)(C) before any provisional relief may be provided.

PROVISIONS NOT INCLUDED IN THE CONFERENCE AGREEMENT

1. REALLOCATION OF GSP BENEFITS TO DEBTOR NATIONS (sec. 192(b) of House bill)

Present law

The President may waive the "competitive need" dollar and percentage limits on duty-free treatment under the Generalized System of Preferences (GSP) on imports of individual eligible articles from particular beneficiary developing countries, by an amount not to exceed 30 percent of total GSP benefits granted in the preceding year, of which not more than one-half may be waived for more advanced developing countries.

Any waiver must be based on a Presidential national economic interest determination, with great weight given to the extent the country will provide equitable and reasonable market access to U.S. products and adequate protection and enforcement of intellectual property rights. The U.S. International Trade Commission must provide advice on whether any U.S. industry is likely to be adversely affected by a waiver.

House bill

The House bill requires the President to waive "competitive need" limits on any eligible article from any GSP beneficiary country debtor nation that qualifies for waiver under the present law criteria, has difficulty servicing its foreign debt, and has at least 20 percent of its debt held by any combination of U.S. banks, the International Monetary Fund, and World Bank. The aggregate waiver amount for such nations cannot exceed the total value of new competitive need exclusions in the preceding year and would count against the total available waiver "pool" under present law.

In deciding which countries, if any, and articles will receive waiver allocations, great weight must be given to (1) the amount of debt of each country relative to its gross national product, (2) the estimated percentage of export earnings each country would be required to devote to servicing its existing debt, (3) each country's trade surplus with the U.S. relative to its outstanding debt, and (4) the extent each country is undertaking good faith efforts to meet its debt obligations.

Senate amendment

No provision.

Conference agreement

The House recedes.

2. USE OF U.S. VESSELS TO TRANSPORT IMPORTED AUTOS (sec. 197 of House bill; sec. 954 of Senate amendment)

Present law

There is no provision dealing specifically with ocean transportation of automobiles. However, the Merchant Marine Act of 1920 and the Shipping Act of 1984 give the Federal Maritime Commission broad authority to remedy acts by foreign governments or private entities that adversely affect U.S. shipping.

House bill

The House bill requires the President to take appropriate and feasible steps within his power to negotiate trade agreements with each country exporting more than 50,000 autos per year to the United States that will eliminate unfair, restrictive, or discriminatory practices in the marine transportation of such autos. The President must report semiannually to Congress on progress made in negotiations.

Senate amendment

The Senate amendment is identical to the House bill.

Conference agreement

The conferees agreed to strike the House and Senate provisions, due to assurances from the Administration that the Federal Maritime Commission already has adequate authority under section 19 of the Merchant Marine Act of 1920 (46 U.S.C. 876) and section 2 of The Shipping Act of 1984 (46 U.S.C. 802) to eliminate unfair trade practices against U.S. flag vessels operated by U.S. companies.

3. WIRE FENCE PANELS (sec. 945 of Senate amendment)

Present law

The Steel Import Stabilization Act, Title VIII of the Trade and Tariff Act of 1984, grants the President authority to enforce the terms of bilateral arrangement limiting the export of steel products to the United States.

House bill

No provision.

Senate amendment

The Senate amendment requires the USTR to request that the bilateral arrangements on steel exports to the United States include restraints on exports of welded steel wire fence panels, wire fabric, and welded steel wire mesh for concrete reinforcement. The provision removes authority to agree to any request for technical adjustments or modifications of bilateral agreements and, if appropriate, requires entry-by-entry certification of compliance with an agreement if a country covered by an existing agreement refuses to expand the coverage of such agreement to include these items.

Conference agreement

The Senate recedes.

4. U.S. TRADE RESTRICTIONS ON PRODUCTS FROM SUB-SAHARAN AFRICA (sec. 952 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the GAO to conduct a study to determine the restrictions which affect the importation into the U.S. of products of developing countries in sub-Saharan Africa. To the maximum extent possible, the study shall identify principal U.S. imports from sub-Saharan Africa; identify U.S. restrictions on those imports; assess the economic loss to sub-Saharan Africa caused by these restrictions; and survey the impact of actions by European and other countries to reduce trade barriers with sub-Saharan Africa. GAO is to report to the Congress by June 1, 1988, and include such recommendations for administrative or legislative action as appropriate.

Conference agreement

The Senate recedes.

5. DENIAL OF TRADE BENEFITS TO COUNTRIES SUPPORTING ACTS OF TERRORISM (sec. 957 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides that the Secretary of State shall identify each foreign country that repeatedly provides support for acts of international terrorism. The identification is to be published in the *Federal Register*. If the Secretary of State determines that an identified foreign country has ceased to provide support for acts of terrorism, he shall also publish such determination. By no later than February 15, 1988, and the same date in each subsequent year, the Secretary shall submit to the Congress the list of identified countries.

If a foreign country has been identified, the President is required to terminate, withdraw, or suspend any portion of any trade agreement or treaty providing nondiscriminatory most-favored-nation (MFN) status to that country. Each such country will be denied MFN status and will not be entitled to GSP and CBI benefits.

The President may waive any or all of the requirements of this provision if he determines waiver is in the best interest of the United States, and must submit to the Congress written notice of any waiver. A waiver may take effect only after the 30-day period (excluding days either House is not in session and Saturdays and Sundays) beginning on the date the President gives notice to the Congress. The President may revoke a waiver at any time.

Conference agreement

The Senate recedes.

6. TRADE WITH AFGHANISTAN (sec. 958 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment authorizes the President to prohibit the importation of all products of Afghanistan and the exportation of any goods or technology to Afghanistan after the date of enactment. The prohibition applies to articles produced in Afghanistan and exported by the Democratic Republic of Afghanistan (DRA) that is sponsored by the Union of Soviet Socialist Republics or any political party, faction, or regime in Afghanistan sponsored by the USSR, and to exports for the benefit of, or use by, the DRA or any Soviet-sponsored party, faction or regime. It is not intended to authorize the President to prohibit trade with Afghan forces or factions for which the Congress has expressed support.

If the President does not act to prohibit trade with Afghanistan before the 45th day after enactment, he must report to the Congress by that date his reasons for not taking action.

Conference agreement

The Senate recedes.

7. SUSPENSION OF NONDISCRIMINATORY TREATMENT FOR ANGOLAN PRODUCTS (sec. 960 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment suspends most-favored-nation (MFN) and GSP treatment for Angola for the 6-month period beginning on the date of enactment. Such treatment may be renewed during any "rights review period" (defined as the initial 6-month period after enactment and each successive 180-day period thereafter), only if the President submits to the Congress, no later than 30 days before the end of the preceding review period, a determination that Angola has met five specified conditions relating, among other things, to human rights observance and the pullout of foreign communist troops. In addition, the provisions of Title IV of the Trade Act of 1974 (the "Jackson-Vanik Amendment") are to be inapplicable to Angola.

Conference agreement

The Senate recedes.

8. CANADIAN IMPORT TRIBUNAL DECISION AFFECTING UNITED STATES CORN EXPORTS TO CANADA (sec. 691 of House bill)

Present law

No comparable provision.

House bill

The House bill contains a Sense of Congress provision which includes several findings concerning U.S.-Canada corn trade and urges the USTR to immediately initiate an investigation under section 302(c) of the Trade Act of 1974 to determine whether the Canadian Import Tribunal determination under the Canadian countervailing duty law with respect to U.S. exports of corn is inconsistent with the obligations of Canada under the GATT. If the USTR determines that the Canadian decision was inconsistent with GATT obligations, the USTR should make recommendations to the President regarding appropriate action.

Senate amendment

No comparable provision.

Conference agreement

The House recedes.

9. FOREIGN IMPORT RESTRICTIONS ON U.S. CITRUS FRUITS AND BEEF PRODUCTS (sec. 692 of House bill)

Present law

No comparable provision.

House bill

The House bill contains a Sense of Congress provision which sets forth findings that certain U.S. trading partners are engaging in practices that tend to unreasonably burden U.S. exports of citrus fruits and beef products. If a country is found to engage in acts or practices that deny access to the market by U.S. citrus and beef exports and such acts are in contravention with the country's GATT obligations, the President is urged to take steps that result in the exclusion of like or other imports from such country until the country eliminates such acts or practices.

Senate amendment

No provision.

Conference agreement

The House recedes.

10. ENTRY PROCESSING FOR TEXTILES AND APPAREL (sec. 704 of House bill)

Present law

No provision.

House bill

The House bill requires the Secretary of Commerce within 90 days of the date of enactment to institute procedures to expedite the interagency process for recommending and approving calls for consultations on textile improvement quotas.

Senate amendment

No provision.

Conference agreement

The House recedes.

PART 3—OTHER PROVISIONS

SECTION 1941. WINDFALL PROFIT TAX REPEAL (sec. 980 of Senate amendment)

Present law

An excise tax is imposed on certain domestic oil. The tax is imposed on the excess of the sales price for the oil over the sum of the base price for that oil plus an adjustment for state severance taxes. The tax is limited to 90 percent of the net income from the well.

The base price for oil produced from any property is based on several factors, including the date commercial production began, the type of oil, the type of producer, and the type of property. The base price is adjusted annually for inflation. The rate of the tax similarly varies based on several factors; the rate ranges from as high as 70 percent for certain oil produced by integrated producers, to 22.5 percent for certain newly discovered oil. Oil produced by independent producers from stripper wells is exempt from the tax.

The windfall profit tax is scheduled to phase out over a 33-month period, beginning after December 31, 1987 if the cumulative revenues raised by the tax reach $227.3 billion, but in any event beginning no later than January 1991. As of September 1986, $79 billion of windfall profit tax had been collected.

House bill

No provision.

Senate amendment

The Senate amendment repeals the excise tax for crude oil removed from the premises beginning on the date of enactment.

Conference agreement

The House recedes.

STUDY OF SOURCE RULES FOR SALES OF INVENTORY (sec. 962 of Senate amendment)

Present law

Section 1211(d) of the Tax Reform Act of 1986 directed the Secretary of the Treasury to conduct a study of the foreign tax credit source rules for sales of inventory property. The study is required to be completed by September 30, 1987.

House bill

No provision.

Senate amendment

The Senate amendment directs the Treasury to conduct the study in consultation with the Commerce Department and the USTR and extends the deadline for submission of the study by one year.

Conference agreement

The Senate recedes.

TITLE II—EXPORT ENHANCEMENT

SUBTITLE A—TRADE AND FOREIGN POLICY

EUROPEAN COMMUNITY: FATS AND OILS TARIFF

(Sec. 321 of the House bill)

Present law

Present law contains no such provision.

House bill

Section 321 of the House bill expresses the sense of the Congress opposing the European Community tariff on imported fats and oils, and supporting retaliation should this tariff be implemented.

Senate amendment

The Senate amendment contained no provision.

Conference agreement

The conference agreement deletes the provision.

RELATIONS WITH MEXICO

(Sec. 363 of the House bill; Sec. 997 of Senate amendment; Sec. 2111 of Conference Agreement)

Present law

Present law contains no such provision.

House bill

Section 363 of the House bill creates a U.S.-Mexico Interagency Commission to serve as a formal mechanism for conducting U.S.-Mexican economic relations, and calls for a summit between the United States and Mexico on economic and trade relations. Section 907 of the House bill requires the Department of Commerce to submit a report to Congress on bilateral trade issues between the U.S. and Mexico.

Senate amendment

Section 977 of the Senate amendment expresses the sense of the Congress that U.S. and Mexico should adopt a trade and investment agreement.

Conference agreement

The conference agreement urges the President to use the recently signed Bilateral Framework Agreement on Trade and Investment to continue to pursue consultations with the Government of Mexico.

MONITORING TECHNOLOGY TRANSFER

(Sec. 412 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Section 412 of the Senate amendment requires the National Trade Estimates (NTE) to include a new annual report, prepared by the United States Trade Representative (USTR) in conjunction with the National Science Foundation (NSF), on the transfer of technology between the United States and foreign countries, and requires the USTR, in conjunction with the NSF, to continually monitor the transfer of technology between the United States and foreign countries.

Conference agreement

The conference agreement deletes the provision.

MONITORING INTELLECTUAL PROPERTY PROTECTION

(Sec. 413 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Section 413 of the Senate amendment directs the Secretary of Commerce to designate a Foreign Commercial Service Officer in a foreign country to monitor and report on the status of the intellectual property system in such country, including the maintenance of files on intellectual property protection afforded on a sector-by-sector basis by country, the filing of an annual report with the Secretary of Commerce on changes to such laws in each sector, and upon request, informing potential U.S. exporters and foreign direct investors of protection afforded intellectual property rights in such country.

Conference agreement

The conference agreement incorporates the provision in Section 2301 relating to the establishment and purpose of the United States and Foreign Commercial Service.

FOREIGN AID FOR INTELLECTUAL PROPERTY PROTECTION

(Sec. 414 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Section 414 of the Senate amendment amends the Foreign Assistance Act to authorize the President, after consultation with the Secretary of Commerce, to furnish assistance for programs to aid less developed countries in developing and implementing adequate intellectual property laws.

Conference agreement

The conference agreement deletes the provision.

UNITED STATES INTELLECTUAL PROPERTY INSTITUTE

(Sec. 415 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Section 415 of the Senate amendment directs the Secretary of Commerce to establish the U.S. Intelligence Property Training Institute, which would be funded exclusively from the private sector and whose purpose is to train individuals from developing countries in management and technical skills regarding the protection of intellectual property.

Conference agreement

The conference agreement deletes the provision.

IRAN SANCTIONS

(Sections 963-966 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Sections 963-966 contain congressional findings concerning the Iran-Iraq War and prohibit imports from and exports to Iran or any other country in the Persian Gulf region if it launches an attack in the Strait of Hormuz using Silkworm missiles or attacks any United States vessels, facilities or persons in the Persian Gulf area.

Conference agreement

The conference agreement deletes the provisions.

SILKWORM MISSILES

(Sec. 967 of the Senate amendment; Sec. 2112 of the Conference Agreement)

Present law

Present law contains no such provision

House bill

The House bill contains no provision.

Senate amendment

Section 967 of the Senate amendment expresses the sense of the Congress that other nations should cease transfers of offensive weapons to belligerents in the Persian Gulf.

Conference agreement

The conference agreement is identical to the Senate provision.

FAIR TRADE IN AUTO PARTS

(Sections 968-972 of the Senate amendment; Sections 2121-25 of the Conference Agreement)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Sections 968-972 of the Senate amendment direct the Secretary of Commerce to establish an auto parts and accessories sales intiative to Japan.

Conference agreement

The conference agreement is identical to the Senate provision.

SUBTITLE B—EXPORT ENHANCEMENT

COMMERCIAL PERSONNEL AT THE AMERICAN INSTITUTE OF TAIWAN

(Sec. 316 of the House bill; Sec. 1802 of the Senate amendment; Sec. 2201 of the Conference Agreement)

Present law

Present law contains no such provision.

House bill

Section 316 of the House bill directs the American Institute of Taiwan to employ personnel performing commercial service duties in a number commensurate with those Commercial Service personnel permanently assigned to the U.S. mission in Seoul.

Senate amendment

Section 1802 of the Senate amendment is nearly identical to the House provision.

Conference agreement

The conference agreement is identical to the Senate provision.

COUNTRY REPORTS ON ECONOMIC POLICIES AND TRADE PRACTICES

(Sec. 323 of the House bill; Sec. 2202 of the Conference Agreement)

Present law

Under present law and practice this information is contained in four separate reports.

House bill

Section 323 of the House bill requires the Secretary of State to prepare and submit an annual report on economic policies and trade practices of U.S. trade partners to the appropriate committees of Congress.

Senate amendment

The Senate contains no similar provision.

Conference agreement

The conference agreement is identical to the House provision.

TRADE LIBERALIZATION IN DEVELOPING COUNTRIES

(Sec. 342 of the House bill; Sec. 1803 of the Senate amendment)

Present law

Present law does not contain such a provision.

House bill

Section 342 of the House bill expresses the sense of the Congress that U.S. foreign assistance should support long-term trade liberalization in developing countries.

Senate amendment

Section 1803 of the Senate amendment is identical to the House bill.

Conference agreement

The conference agreement deletes the provision.

OVERSEAS PRIVATE INVESTMENT CORPORATION

(Sec. 343 of the House bill; Sec. 2003 of the Senate amendment; Sec. 2203 of the Conference Agreement)

Present law

Present law sets forth ceilings on OPIC program expenditures, but does not establish any minimum expenditure requirements. The Office of Management and Budget has set lower ceilings on OPIC program expenditures and administratively reduced OPIC budget and staff.

House bill

Section 343 of the House bill increases the Overseas Private Investment Corporation's overall loan guarantee program, its yearly loan guarantee program, and its direct investment program, and sets minimum levels for the budget and staff of OPIC.

Senate amendment

Section 2003 of the Senate amendment requires a detailed justification for worker rights determinations on OPIC projects in the People's Republic of China.

Conference agreement

The conference agreement increases the overall and annual minimum funding for OPIC's loan guaranty program (from $750 million to $1 billion and from $150 million

to $200 million, respectively) and for its direct investment program from $15 million to $25 million, and requires a detailed justification for worker rights determinations on OPIC projects in the PRC.

TRADE AND DEVELOPMENT PROGRAM AND MIXED CREDITS

(Sec. 334 of the House bill; Sections 1804-05 of the Senate amendment; Sec. 2004 of the Conference Agreement)

Present law

TDP was established as an independent agency by Executive Order; its FY 1988 appropriation is $25 million. The 1983 Trade and Development Enhancement Act created a tied aid program within the Agency for International Development.

House bill

Section 344 of the House bill codifies the status of the Trade and Development Program (TDP) as an independent agency and authorizes to be appropriated a minimum of $30 million in fiscal year 1988 and $31 million in fiscal year 1989 for TDP. In addition, this section transfers to TDP the authority to administer the tied aid credits program under the Trade and Development Enhancement Act; authorizes the TDP Director, with the concurrence of the Department of State and the Agency for International Development, to use Economic Support Fund assistance for tied aid credits; and substitutes a simple majority vote for the present unanimous consent approval process for National Advisory Council (NAC) decisions on tied aid credit cases.

Senate amendment

Sections 1804-05 of the Senate amendment are similar to the House bill, except that the Senate amendment also creates an advisory board for TDP, to include representatives of the Small Business Service Bureau, the American Consulting Engineers and the International Engineering and Construction Industries Council; authorizes $50 million for TDP for FY 1988, of which $25 million is available only for education and training activities in the People's Republic of China, and specifies that not less than 50% of the additional $25 million for FY 1988 shall be available only for education and training activities administered in the U.S. by small business firms. The Senate amendment substitutes a simple majority vote for unanimous consent in the NAC approval process for tied aid credits not involving the Export-Import Bank.

Conference agreement

The conference agreement combines the House and Senate provisions to codify TDP's status as an independent agency within the International Development Cooperation Agency; authorizes in FY 1988 and 1989, not less than $5 million and not more than $10 million in addition to funds otherwise available to TDP for its activities and provides that one-half of this funding come from the Private Enterprise Revolving Fund set-up under Sec. 108 of the Foreign Assistance Act, and that one-half come from Economic Support Funds; establishes an advisory board for TDP, including representatives from the Small Business Service Bureau, the American Consulting Engineers and the International Engineering and Construction Industries Council; transfers to TDP the authority to administer the foreign assistance portion of the tied aid credits program under the Trade and Development Enhancement Act; authorizes the TDP Director, with the concurrence of the Secretary of State, acting in cooperation with the Administrator of AID to use ESF funds to finance tied aid credit activities; authorizes in addition to other funds available to TDP $10 million in each of fiscal years 1988 and 1989 for education and training programs, with particular emphasis on nationals from the PRC and Taiwan, and directs that 50% of the $10 million be available only for education and training programs administered by small business in the U.S.

In agreeing to delete from the House and Senate provisions the elimination of the requirement of National Advisory Council unanimous consent for tied aid credits, the conferees nevertheless express strong concern over the practice of some participating NAC departments and agencies in withholding consent in important tied aid credit cases. Such positions thwart the intent of the Congress in establishing the tied aid credits program, and undermine United States exporters seeking to compete against increasingly predatory tied aid credits overseas.

COUNTERTRADE AND BARTER

(Sec. 345 and Sec. 912 of the House bill; Sec. 4501 of the Senate amendment; Sec. 2205 of the Conference Agreement)

Present law

Section 309 of the Defense Production Act presently requires an annual report on the impact of defense-related offsets on U.S. exports; an interagency group meets infrequently on offset issues.

House bill

Section 345 of the House bill establishes an interagency group on countertrade, to be chaired by the Secretary of Commerce, to review U.S. policy on countertrade, to monitor foreign countertrade activities, and to make information on countertrade opportunities available to U.S. exporters.

Section 912 of the House bill requires that U.S. exporters report to the Department of Commerce each contract valued at over $2 million for a sale to a foreign person which, pursuant to the authority of the foreign government involved, requires countertrade or offsets as a condition for sale, and sets forth penalties for failure to report such information.

Senate amendment

Section 4501 of the Senate amendment establishes an office within the Department of Commerce to monitor foreign countertrade activities, and to disseminate information on barter and countertrade opportunities.

Conference agreement

The conference agreement establishes an interagency group on countertrade and offsets and establishes within the Commerce Department's International Trade Administration an office of barter.

FOREIGN AID PROCUREMENT

(Sec. 346 of the House bill)

Current law

The Foreign Assistance Act presently restricts Foreign Aid procurement of construction and engineering services from certain countries.

House bill

Section 346 of the House bill prohibits the procurement with foreign assistance funds of any goods and services from OECD nations or newly industrialized countries (NICs), unless U.S. goods and services are not competitive in the markets where such goods and services will be used.

Senate amendment

The Senate amendment contains no such provision.

Conference agreement

The conference agreement deletes the provision.

PROTECTION OF U.S. INTELLECTUAL PROPERTY

(Sec. 351 of the House bill; Sec. 1806 of the Senate amendment; Sec. 2206 of the Conference Agreement)

Present law

No such provision is contained in present law.

House bill

Section 351 of the House bill expresses the sense of the Congress that the Secretary of State, the United States Trade Representative, and U.S. Ambassadors should discuss intellectual property protection with relevant foreign entities; that the U.S. should seek to strengthen protection of U.S. intellectual property overseas; and that the Agency for International Development should provide technical assistance in intellectual property protection.

Senate amendment

Section 1806 of the Senate amendment is similar to the House provision.

Conference agreement

The conference agreement is identical to the House provision.

REGISTRATION FEES FOR MUNITIONS CONTROLS

(Sec. 1807 of the Senate amendment)

Current law

A comparable provision was included in the FY 1988-89 Foreign Relations Authorization Act, which became P.L. 100-204 on December 22, 1987.

House bill

The House bill does not contain such a provision.

Senate amendment

Section 1807 of the Senate amendment amends the Arms Export Control Act to require that $100,000 of munitions licensing fees be credited to a Department of State account in each fiscal year to help automate munitions control licensing.

Conference agreement

The conference agreement deletes the Senate provision.

PROHIBITION ON FUNDING FOR FOREIGN AGRICULTURAL PRODUCTION

(Sec. 1808 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

The House bill contained no such provision.

Senate amendment

Section 1808 of the Senate amendment prohibits the use of foreign assistance for agricultural projects overseas which produce commodities that might compete with U.S. agricultural exports.

Conference agreement

The conference agreement deletes the provision.

REPORT ON INTERNATIONAL WORKERS RIGHTS

(Sec. 2002 of the Senate amendment; Section 2207 of the Conference Agreement)

Present law

Section 505(c) of the Trade Act of 1974 requires an annual report to Congress on the

status of internationally-recognized worker rights in each country receiving GSP benefits. The report is included in the annual State Department Country Report on Human Rights Practices.

House bill

The House bill contained no provision.

Senate amendment

Section 2002 of the Senate amendment requires the Secretary of State to report to Congress within six months of the date of enactment on the results of a study on ways to improve and provide more detailed reporting on workers rights.

Conference agreement

The conference agreement is identical to the Senate provision.

MONITORING REEXPORTS

(Sec. 2004 of the Senate amendment)

Present law

No such provision is contained in present law.

House bill

The House bill contained no provision.

Senate amendment

Section 2004 of the Senate amendment expresses the sense of the Congress that the Secretary of State in cooperation with the Secretaries of Commerce and Defense, should review and report to Congress on the adequacy of current practices and procedures for monitoring and enforcing reexport controls on the use of U.S.-origin military and dual-use technology.

Conference agreement

The conference agreement deletes the provision.

JAPANESE IMPORTS FROM DEVELOPING COUNTRIES

(Sec. 2005 of the Senate amendment; Sec. 2208 of the Conference Agreement)

Present law

Present law does not contain such a provision.

House bill

The House bill contained no provision.

Senate amendment

Section 2005 expresses the sense of the Congress that Japan should import more manufactured goods from developing countries.

Conference agreement

The conference agreement is identical to the Senate provision.

JAPAN AND ARAB BOYCOTT OF ISRAEL

(Sec. 2006 of the Senate amendment; Sec. 2209 of the Conference Agreement)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Section 2006 expresses the sense of the Congress that Japan should expand trade with Israel and that Japanese firms should end compliance with the Arab boycott of Israel.

Conference agreement

The conference agreement is identical to the Senate provision.

NEGOTIATION OF AN INTERNATIONAL AGRICULTURAL RESERVE AGREEMENT

(Sec. 2007 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

The House bill contained no provision.

Senate amendment

Section 2007 expresses the sense of Congress that the President should negotiate the establishment of an international agricultural conservation reserve to reduce world grain surpluses.

Conference agreement

The conference agreement deletes the provision.

FACILITATION OF JEWELRY EXPORTS

(Sec. 2009 of the Senate amendment; Sec. 2210 of the Conference Agreement)

Present law

Present law contains no such provision.

House bill

The House bill contained no provision.

Senate amendment

Section 2009 expresses the sense of the Congress that the United States should join the Convention on the Control and Marking of Precious Metal Articles in order to open foreign markets to U.S. jewelry exports.

Conference agreement

The conference agreement is identical to the Senate provision.

PRIVATE SECTOR RESOLVING FUND LOAN GUARANTEE

(Sec. 2010 of the Senate amendment; Sec. 2211 of the Conference Agreement)

Present law

Section 108 of the Foreign Assistance Act prohibits the Resolving Fund from guaranteeing loans, and sets a $3 million cap on the amount the revolving fund may contribute to any one project.

House bill

The House bill contained no provision.

Senate amendment

Section 2010 of the Senate amendment authorizes AID's Private Enterprise Revolving Fund to guarantee loans up to 50 percent of the project or $5 million, whichever is less.

Conference agreement

The conference agreement is similar to the Senate provision, but it maintains the present statutory ceiling of $3 million on PRE projects.

REFLAGGING KUWAITI VESSELS

(Sec. 2011 of the Senate amendment)

Present law

House Joint Resolution 216, expressing support for a ceasefire in the Iran-Iraq War and a negotiated solution to the conflict, became P.L. 100-96 on August 18, 1987.

House bill

The House bill contained no provision.

Senate amendment

Section 2011 of the Senate amendment expresses the sense of the Senate that the President should pursue alternatives to reflagging Kuwaiti tankers in the Persian Gulf.

Conference agreement

The conference agreement deletes the provision.

ASSISTANCE TO POLAND

(Sections 4701-11 of the Senate amendment; Sections 2221-27 of the Conference Agreement)

Present law

No comparable provision is contained in the present law.

House bill

The House bill contained no provision.

Senate amendment

Sections 4701-11 of the Senate amendment contain congressional findings and policy on U.S. assistance to Poland; authorize to be appropriated $1 million for U.S.-Polish science and technology agreements; and earmark $10 million in Economic Support Fund assistance for agricultural activities in Poland, $2 million for medical supplies, and $1 million for support of Solidarity.

Conference agreement

The conference substitute drops all Congressional findings and statements of U.S. policy contained in the Senate amendment. It retains the Senate provisions for authorizations of funding for the United States-Polish Science and Technology Agreement and the provision of medical supplies and hospital equipment to Poland. The conference substitute drops the Senate provisions concerning agriculture and rural development assistance to Poland and assistance to Solidarity insofar as those provisions have already been enacted into law by the Continuing Resolution (P.L. 100-202) and the FY 88 & 89 Foreign Relations Authorization Act (P.L. 100-204) respectively. The conference substitute earmarks 8,000 metric tons of surplus agricultural commodities for each of the fiscal years 1988 through 1992 to the government of Poland to be sold and the proceeds of that sale to be used by nongovernmental agencies operating in Poland for the activities described in the Senate amendment and any other project or activity which strengthens and supports private and independent sectors of the Polish economy, especially independent farming and agriculture. Finally, the conference substitute provides that the joint commission which is to be established to approve projects which use the funds generated by the agricultural commodity sales shall include appropriate representatives of the Polish government, appropriate representatives of nongovernmental agencies operating in Poland, and representatives from the United States diplomatic mission in Poland, which may include a representative of the Foreign Agricultural Service.

It is the conferees understanding that provision of 8,000 metric tons of surplus agricultural commodities mandated for Poland by the conference substitute in each of the fiscal years 1988 through 1992 is acceptable in the form of feed grains. It is also the intent of the conferees that the earmark of agricultural commodities may be waived in cases of emergency necessitating the use of some of those commodities for other needs. The executive branch should consult with the House Foreign Affairs Committee, the Senate Foreign Relations Committee, and the House and Senate Agriculture Committees before any action is taken to waive this earmark.

JAPANESE PURCHASE OF NEW FIGHTER AIRCRAFT

(Sec. 4901 of the Senate Amendment)

Present law

Present law contains no such provision.

House bill

The House bill contains no provision.

Senate amendment

Section 4901 of the Senate amendment expresses the sense of the Senate that the Government of Japan should purchase new fighter aircraft from the United States.

Conference agreement

The conference agreement deletes the provision.

SUBTITLE C—EXPORT PROMOTION

House bill—Short title

Section 301 of the House Bill cites the short title as the "Export Enhancement Act of 1987."

Senate amendment

The Senate amendment contains no provision.

Conference agreement

The Conference agreement deletes the provision.

House bill—Finding and purpose

Section 302 of the House bill contains congressional findings concerning the promotion of U.S. exports.

Senate amendment

No provision is contained in the Senate amendment.

Conference agreement

The conference agreement deletes the provision.

UNITED STATES AND FOREIGN COMMERCIAL SERVICE

(Sec. 311 of the House bill; Sec. 1204 of the Senate Amendment; Sec. 2301 of the Conference Agreement)

Present law

The U.S. and Foreign Commercial Service was created by Executive Order in 1980.

House bill

Section 311 of the House bill establishes the United States and Foreign Commercial Service in the Commerce Department's International Trade Administration, and directs the Secretary of State to accord the diplomatic title of Minister-Counselor to the Senior Commercial Service Officer at not more than eight United States Missions overseas. The section also requires reports to Congress evaluating U.S. export services and on integrating the domestic and foreign export services, and directs the Commerce Department Inspector General to audit the U.S. and FCS at least once every three years.

Senate amendment

Section 1204 of the Senate amendment authorizes the Secretary of Commerce to designate eight overseas missions where the senior Foreign Commercial Service officer may use the title Minister-Counselor.

Conference agreement

The conference agreement is similar to the House provision, but deletes the reporting requirement on Department of Commerce export services and requires that FCS officers overseas provide U.S. exporters with information on intellectual property protection in foreign countries.

DIPLOMATIC MISSION

(Sec. 312 of the House bill; Sec. 1201 of the Senate amendment)

Present law

Present law contains no such provision.

House bill

Section 312 of the House bill requires the Secretaries of State and Commerce to assure the adequacy of commercial personnel at U.S. missions overseas, and requires certain U.S. missions to prepare annual export expansion strategies.

Senate amendment

Section 1201 of the Senate amendment is identical to the House provision.

Conference agreement

The conference agreement deletes the provision.

COMMERCIAL SERVICE OFFICERS AND MULTILATERAL DEVELOPMENT BANKS

(Sec. 313 of the House bill; Sections 1201, 1203, and 1801 of the Senate amendment; Sec. 2302 of the Conference Agreement)

PRESENT LAW

Under present statutory authority the Commerce department has assigned personnel on a part-time basis to monitor MDB procurement.

House bill

Section 313 of the House bill directs the Secretary of Commerce, in consultation with the Secretary of Treasury, to appoint a Foreign Commercial Service officer to serve with each U.S. Executive Director to a Multilateral Development Bank (MDB) in order to promote U.S. exports in MDB procurement.

Senate amendment

Section 1201(c) of the Senate amendment contains a similar sense of the Congress provision. In addition, section 1203 and section 1801(b) of the Senate amendment requires the Secretary of Commerce to designate an office in the International Trade Administration to serve as a business liaison with Multilateral Development Banks overseas, and to disseminate information on new MDB project procurement. Section 1201 of the Senate amendment directs the Secretary of Treasury to provide similar MDB procurement services to U.S firms.

Conference agreement

The conference agreement combines the House and Senate provisions (Also, see Sec. 3201, Title III).

MARKET DEVELOPMENT COOPERATOR PROGRAM AND TRADE SHOWS

(Sec. 314 of the House bill; Sections 2303-5 of the Conference Agreement)

Present law

Present law contains no such provision.

House bill

Section 314 of the House bill authorizes to be appropriated $6 million in fiscal year 1988 to the Department of Commerce to establish a market development cooperator program and to provide assistance to trade shows in the United States.

Senate amendment

No provision is contained in the Senate amendment.

Conference agreement

The conference agreement is similar to the House provision, but authorizes $6 million in fiscal years 1988, 1989 and 1990 for these programs. In addition, the conference agreement authorizes the Administration's request of $123.9 million for FY 1988, and $146.4 million for FY 1989 and 1990 for Commerce Department export promotion and trade development programs.

PACIFIC RIM INITIATIVE

(Sec. 315 of the House bill: Sec. 2306 of the Conference Agreement)

Present law

No such provision is contained in present law.

House bill

Section 315 of the House bill directs the Secretary of Commerce to create a pilot Foreign Commercial Service program to promote U.S. exports to Japan, Korea, and Taiwan, and to report to Congress semi-annually on progress in the program.

Senate amendment

The Senate amendment contains no provision.

Conference agreement

The conference agreement is similar to the House provision, but deletes the reporting requirement.

INDIAN TRIBES EXPORT PROMOTION

(Sec. 1206 of the Senate amendment; Sec. 2307 of the Conference Agreement)

Present law

The present law contains no provision.

House bill

The House bill contains no provision.

Senate amendment

Section 1206 of the Senate amendment authorizes the Secretary of Commerce to provide grants to entities to develop foreign markets for authentic American Indian arts and crafts.

Conference agreement

The conference agreement is similar to the Senate provision, but authorizes the Commerce Secretary to provide assistance, including grants, for exports of authentic American Indian arts and crafts.

The conferees strongly urge the Secretary of Commerce to promulgate rules and regulations implementing this provision as expeditiously as possible. The conferees also urge the Commerce Department to inform Indian tribes and other entities eligible for assistance under this program of the establishment of the program and the guidelines for its use. The conferees note that there have been problems in the past determining the authenticity of Indian arts and crafts. It is the conferees' intent that export assistance under this program be provided only to those arts and crafts hand made or hand crafted by American Indian artisans, and that only such products be considered authentic American Indian arts and crafts.

PRINTING AT OVERSEAS LOCATIONS

(Sec. 317 of the House bill; Sec. 1207 of the Senate amendment; Sec. 2308 of the Conference Agreement)

Present law

Authorization for such activities is renewed on a year-to-year basis in appropriations law.

House bill

Section 317 of the House bill authorizes the Secretary of Commerce to print, distribute and sell export promotion documents abroad and to accept paid advertisements to support costs involved in the printing and distribution of such materials.

Senate amendment

Section 1207 of the Senate amendment contains a similar provision.

Conference agreement

The conference agreement is similar to the Senate provision.

LOCAL CURRENCIES UNDER P.L. 480

(Sec. 318 of the House bill; Sec. 2309 of the Conference Agreement)

Present law

The 1985 Food Security Act contains an agricultural trade policy statement. P.L. 100-202, making further continuing appropriations for fiscal year 1988, also contains provisions on the use of P.L. 480 funds for private voluntary organization nonemer-

gency programs and on the use of P.L. 480 title II local currency funds.

House bill

Section 318 of the House bill sets forth United States policy on agricultural trade. The section also permits P.L. 480 local currency funds to be used for the construction of low and medium income housing; makes wood and wood products eligible for Commodity Credit Corporation GSM 102 and 103 export credit guarantee programs; authorizes the Secretary of Agriculture to expand the number of agricultural attaches overseas; and authorizes the Secretary of Agriculture to designate up to eight overseas missions at which the senior agriculture officer may use the diplomatic title of Minister-Counselor.

Senate amendment

The Senate amendment contains comparable provisions.

Conference agreement

The conference agreement permits P.L. 480 local currencies to be used for the construction of low and medium income housing and shelter. (Also see Sections 4102 and 4402 Title IV.)

FOOD AID AND MARKET DEVELOPMENT

(Sec. 320 of the House bill; Sec. 4309, Title IV of the Conference Agreement)

Present law

Present law contains no such provision.

House bill

Section 320 of the House bill states that it is United States policy to use food aid to develop markets for American agricultural commodities and products, and directs the President to encourage U.S. food aid recipients to give preference to American food and food products in its commercial food aid purchases.

Senate amendment

No comparable provision is contained in the Senate Amendment.

Conference agreement

The conference agreement is the House provision, and is contained in Section 4309, Title IV.

CATALOG OF U.S. GOVERNMENT RESOURCES

(Sec. 1205 of the Senate Amendment)

Present law

Such information is presently available from the Overseas Private Investment Corporation, the Ex-Im Bank, the US & FCS and other U.S. Government agencies.

House bill

The House bill contains no provision.

Senate amendment

Section 1205 of the Senate amendment directs the Secretary of Commerce, in consultation with other relevant U.S. Government agencies, to prepare a reference manual on exporting and investing abroad for the U.S. business community.

Conference agreement

The conference agreement deletes the provision.

EXPORT PROMOTION DATA SYSTEM

(Sec. 324 of the House bill; Sections 3811-3823 of the Conference Agreement)

Present law

The Commerce Department is presently developing a Commercial Information Management System to provide U.S. exporters with information on export opportunities.

House bill

Section 324 of the House bill establishes an export promotion data system within the Commerce Department to provide information on export opportunities to American businesses. The section requires reports to Congress on the operation of the system.

Senate amendment

Section 1202 of the Senate amendment contains a similar provision.

Conference agreement

The conference agreement incorporates the House and Senate provisions as the export promotion data system into Sections 3811-3823, the National Trade Data Bank.

PRESHIPMENT INSPECTION REQULATION PROGRAM

(Sec. 325 of the House bill)

Present law

There is no specific statutory authority to regulate preshipment inspection companies.

House bill

Section 325 of the House bill establishes within the Department of Commerce a preshipment inspection certifictaion program.

Senate amendment

No provision is contained in the Senate amendment.

Conference agreement

The conference agreement deletes the House provision.

The members of the Conference note the increasing activity of preshipment inspection companies and the concern in the United States, in the business community and in the Congress, regarding the nature of some of their activities. Preshipment inspections are useful tools of international commerce for checking the financial terms, quantity, and quality of shipments. These services can help minimize opportunities for capital flight, fraud, tax evasion, and inappropriate price discrimination by preventing fraudulent and abusive overinvoicing and underinvoicing. However, if abused, preshipment inspection may burden U.S. export trade by imposing inappropriate controls on international prices, increasing the cost of export shipment, delaying shipment, and compromising confidential business information.

The conferees urge the appropriate committees to review the nature and operations of preshipment inspection. Further, the Conferees urge the Executive Branch to continue its review and study of preshipment inspection services and, as appropriate, report to the Congress its findings and recommendations. That review should include consideration of the report of the International Trade Commission entitled "Preshipment Inspections Programs and Their Effects on U.S. Commerce" (report to the President on investigation number TA/332/242, August, 1987). The conferees also urge the Executive Branch to pursue vigorously consideration of multilateral rules for preshipment inspection in the GATT Nontariff Measures Negotiation Group. The Congress also urges the exporters and the preshipment inspection industry to establish rules to insure that preshipment inspection activities comport with free and open commerce.

OFFICE OF EXPORT TRADE

(Sec. 1104 of the Senate amendment; Sec. 2310 of the Conference Agreement)

Present law

Under present law the Office of Export Trade promotes the formation of ETC's and export trade associations; no specific mention is made of export management companies.

House bill

The House bill contains no provision.

Senate amendment

Section 1104 of the Senate amendment amends the Export Trading Company Act to require the Commerce Department Office of Export Trade to establish a program to assist and encourage the operation of export intermediaries, including new and existing export management companies.

Conference agreement

The conference agreement is identical to the Senate provision.

REPORT ON EXPORT TRADING COMPANIES

(Sec. 326 of the House bill; Sec. 1105 of the Senate amendment; Sec. 2311 of the Conference Agreement)

Present law

Present law does not require such reports to Congress.

House bill

Section 326 of the House bill amends the Export Trading Company Act to require the Secretary of Commerce to submit an annual report to Congress on the Department's efforts to encourage the formation of ETC's including a survey of the activities of export management companies and export trade associations.

Senate amendment

Section 1105 of the Senate amendment is similar to the House provision, but requires a one-time report 18 months after enactment.

Conference agreement

The conference agreement is similar to the Senate provision.

INTERNATIONAL NEGOTIATIONS

(Sec. 341 of the House bill; Sec. 1304 of the Senate amendment)

Present law

Present law contains no such provisions.

House bill

Section 341 of the House bill directs the President and the Secretary of the Treasury to continue negotiations on growth-oriented export policies and on coordinating macroeconomic policy.

Senate amendment

Section 1304 of the Senate amendment is a similar provision.

Conference agreement

The conference agreement deletes the provisions.

SUBTITLE D—EXPORT CONTROLS

PART 1—EXPORT CONTROLS GENERALLY

Export license fee (sec. 333 of House bill; sec. 1003 of Senate amendment; section 2411 of Conference agreement)

Present Law

No provision.

House Bill

The House bill prohibits the charging of fees in connection with the submission or processing of an export license application.

Senate amendment

The Senate amendment is identical to House provision.

Conference agreement

The conference agreement is the House provision.

Multiple license authority (sec. 332(a) of House bill; sec. 1001 of Senate amendment; section 2412 of Conference agreement)

Present Law

Section 4(a) of the Export Administration Act of 1979, as amended, (EAA) prohibits the use of distribution and comprehensive operations licenses for exports to controlled countries, including the People's Republic of China (PRC).

House Bill

The House bill exempts the PRC from the prohibition on the use of distribution and comprehensive operations licenses for controlled countries.

Senate amendment

The Senate amendment exempts the PRC from the prohibition on the use of distribution licenses to controlled countries.

Conference agreement

The conference agreement is the House provision.

General license for Reliable End Users (sec. 1002 of Senate amendment)

Present Law

The EAA provides general authority for Secretary of Commerce to require validated, multiple or general licenses.

House Bill

No provision.

Senate amendment

The Senate amendment establishes a general license for exports to qualified foreign parties certified as reliable end users (including government-owned or controlled entities in COCOM or 5(k) countries) of all items but not necessarily including supercomputers.

Conference agreement

The conference agreement is the House provision.

Domestic Sales to commercial entities of controlled countries (sec. 332(b) of House bill; section 2413 of Conference agreement)

Present Law

Section 5(a) of the EAA provides authority to prohibit the transfer within the U.S. to affiliates of controlled countries.

House Bill

The House bill clarifies current law to define affiliates of controlled countries to include government and commercial entities.

Senate amendment

No provision.

Conference agreement

The conference agreement is the House provision.

Authority for Reexports (sec. 332(c) of House bill; sec. 1006 of Senate amendment; section 2414 of Conference agreement)

(a) Finished products

Present Law

Unilateral licensing requirements apply to the reexport of all U.S.-origin goods or technology and foreign products incorporating U.S. goods or technology.

House Bill

The House bill eliminates licensing requirements for the reexport of U.S.-origin goods or technology to COCOM and 5(k) countries, excluding specified end users and extraordinarily sophisticated goods or technology as specified by regulation.

Senate amendment

The Senate amendment eliminates licensing requirements for the reexport of goods, technology, services to COCOM and 5(k) countries, except for highly critical goods that are unilaterally controlled. Two-day advance notification is required for highly critical goods or technology, and reexport licenses are required for goods or technology at or above PRC green line if DoC determines that the recipient country engages in pattern of noncompliance with the COCOM agreement.

Conference agreement

The conference agreement eliminates licensing requirements for the reexport of goods or technology to COCOM/5(k) countries except for: supercomputers; commodities for sensitive nuclear uses; devices for surreptitious interception of oral and wire communication; and commodities for end users as specified by the Secretary of Commerce. The Secretary may require notification of such reexports. The conferees intend, however, that such notification requirements not be imposed prior to such reexport.

(b) Parts and Components

Present Law

Export Administration regulations provide a *de minimus* standard below which no reexport authorization is required for U.S. parts (10% and $10,000 worldwide; 25% for most Free World countries) incorporated into foreign-made products.

House Bill

The House bill eliminates licensing requirements for U.S. parts incorporated into foreign goods if such parts are less than 25% of the value of goods in which they are incorporated.

Senate amendment

The Senate amendment eliminates licensing requirements if: (1) no license is required for the finished product; (2) value of U.S. content is 20% or less; or (3) parts are normal & usual spares or replacements & do not exceed value of U.S. content. The provision applies only if U.S. content is normal for a product and is not incorporated to evade controls. Reexport authorization may be required for highly critical goods or technology.

Conference agreement

The conference agreement eliminates reexport authorization requirements for U.S.-origin parts and components incorporated into foreign-made products where: (1) the value of controlled U.S. content is 25% or less of the total value of the goods in which they are incorporated; or (2) the goods or technology, if exported to a controlled country, would require only notification of COCOM. The Secretary may exclude foreign-made supercomputers incorporating U.S.-origin parts & components. The provision also provides that the Secretary should implement these provisions within 90 days of enactment.

The conferees note that only the term "supercomputer" should require the adoption of a new regulatory definition, and expect that terms such as "sensitive nuclear uses" will be applied in a manner consistent with current regulatory practice and construed in a limited fashion. The term "controlled U.S. content" is intended to clarify that no authorization is required for the reexport of parts and components if the export of those goods from the United States at the time of reexport to the new destination would not require a validated license. Additionally, where the Secretary has authority to exclude specified end users, the conferees intend such designation will focus on those specific end users which the Secretary believes are likely to divert the goods to be reexported.

Exports to Countries other than Controlled Countries (sec. 332(d) of House bill; sec. 1005 & 1004 of Senate amendment; section 2415 of Conference agreement)

a) COCOM/5(k) Countries

Present Law

Section 5(b)(2) of the EAA prohibits licenses for exports of low technology items (AEN-level—only notification of COCOM required for export to controlled countries) to COCOM/5(k) countries.

House bill

The House bill eliminates licensing requirements for exports to COCOM/5(k) countries except for: (1) specific extraordinarily sophisticated goods or technology; 2) specified end users; 3) countries determined to engage in pattern and practice of noncompliance with the COCOM agreement. The effective date is six months after enactment, and DoC may require notification.

Senate amendment

The Senate amendment provide for shipment under general license of goods requiring only notification of COCOM for export to the People's Republic of China (PRC green line) to COCOM/5(k) except for : 1) specified consignees; 2) countries determined to engage in pattern & practice of noncompliance with COCOM agreement. DoC may require notification. Two day advance notification may be required for highly critical goods or technology.

Conference agreement

(a) The conference agreement eliminates licenses for exports to COCOM/5(k) countries of goods or technology, which if exported to the People's Republic of China (PRC green line) or to a controlled country (AEN level) on the date of enactment of this act would require only notification of the participating governments of COCOM. The Secretary may require notification of such exports and may exclude specified end users. The conferees intend, as noted in the reexport section, that such notification requirements not be prior to export. Also, specification of end users is to be limited to end users the Secretary believes are likely to divert such goods.

In choosing the PRC green line (as of date of enactment) as the threshold for delicensing to COCOM/5(k) countries, the conferees have chosen a benchmark level that is not intended to be a maximum or static threshold. Rather, the conferees expect that if the PRC green line is liberalized, the Secretary will apply the same expansion to COCOM delicensing, unless such action for specific items is inappropriate.

The conferees also intend that implementing regulations should permit the maximum licensing reduction for U.S. exporters, allowing the highest level of goods or technology qualifying for export under this threshold without regard to end use and quantity restrictions. In the event that current regulations provide for greater decontrol than the PRC green line for exporters of particular goods or technologies to COCOM/5(k) countries, the Secretary should ensure, at a minimum, that existing standards continue to apply to these goods.

(b) The conferees also agreed to eliminate all licensing requirements for exports of goods & technology to COCOM/5(k) countries that have effective export control systems. U.S. goods & technology continue to be subject to licensing requirements pursuant to COCOM. The Secretary shall make a determination of those countries with effective systems within 3 months of enactment and, upon such determination, eliminate licenses to those countries. The Secretary shall review and update the list of countries at least once a year. The Secretary may add to or remove countries from the list, as appropriate.

In adopting this provision, the conferees explicitly endorse the goal of an export license-free zone among COCOM countries, and expect the Administration to work diligently to achieve this objective as soon as possible. The conferees also intend that the list of countries determined by the Secretary to have effective systems be the same list of countries that are subject to only limited sanctions for future export control violations as provided in section 2444 of this Act (new section 11A(d) of the EAA). Since the necessary elements of the determination by the President are identical to the findings for the Secretary to accord a COCOM or 5(k) country license-free status, the conferees expect that there will be one list of conferees qualifying for both provisions.

b) Countries other than COCOM Countries

Present Law

Current Export Administration regulations provide for General License-Free World (GFW) for exports of goods or technology at the AEN level to most Free World countries.

House bill

The House bill eliminates licensing requirements for goods or technology at the PRC green line to Free World countries, except to specified end users or countries posing significant risks of diversion. The effective date is six months after enactment, and DoC may require notification.

Senate amendment

The Senate amendment eliminates licensing requirements for goods or technology at the AEN level to Free World countries. DoC may require notification.

Conference agreement

The conference agreement is the Senate provision. In adopting the AEN level as a threshold for delicensing to the Free World, the conferees intend this level to be the minimum for delicensing, and expect it to be increased as the AEN level advances, particularly for industrially-advanced countries that are sources for such widely available, low technology items.

Control List (section 2416 of conference agreement)

(a) Resolution of Disputes (sec. 332(e)(1) of House bill; sec. 1007 of Senate amendment; section 2416 of Conference agreement)

Present Law

Section 5(c) of the EAA requires disputes between the Department of Commerce (DoC) and the Department of Defense (DoD) to be referred to the President.

House bill

The House bill provides a mechanism for the resolution of disagreements between DoC and DoD on additions to control list within specified timeframes.

Senate amendment

The Senate amendment specifies that the President shall resolve control list disputes in a timely manner consistent with the dispute resolution mechanism in sec. 10(g) of EAA.

Conference agreement

The conference agreement is the House provision.

(b) Conduct of List Reviews (sec. 332(e)(1)(2) of House bill; sec. 1008 of Senate amendment; section 2416 of Conference agreement)

Present Law

The Department of Commerce is required to maintain and review the control list at least once a year. Technical Advisory Committees (TACs) are to advise and assist the Executive branch.

House bill

The House bill requires partial review of the control list on a quarterly basis, with a 30-day comment period and publication of list revisions, and specifies that concurrence by other agencies is not required for revisions to the list. The provision also requires that the Militarily Critical Technologies List (MCTL) be reviewed on an ongoing basis. Appropriate TACs are to be consulted on changes to the control list, formally represented in the list review process, and informed of disposition of recommendations.

Senate amendment

The Senate amendment provides that data developed from control list review shall be used by Secretary of Commerce in formulating COCOM proposals.

Conference agreement

The conference agreement combines the House and Senate provisions, with the exception of dropping the mandate that TACs be formally represented in the list review process. The conferees intend, however, that requiring consultation with the appropriate TACs, will promote better government-industry cooperation and result in a more effective and comprehensible export control system.

Responsibilities of Secretary of Commerce (sec. 1008 of Senate amendment; section 2416 of Conference agreement)

Present Law

The EAA provides general authority to the Secretary of Commerce to carry out all functions under the Act, unless specifically delegated to another agency.

House bill

No provision.

Senate amendment

The State amendment reinforces the authority of the Secretary of Commerce to formulate list review proposals; review other COCOM countries' license applications; and determine comparability of third countries' export systems.

Conference agreement

The conference agreement is the House position.

In agreeing to delete the Senate provision, the conferees do so in the belief that such amendments are unnecessary because the Export Administration Act already specifies the Department of Commerce as the primary agency responsible for all functions under the Act except those expressly delegated to another agency.

The Department of State has primary responsibility, pursuant to section 5(k) of the Act, to conduct negotiations with other countries. Section 5(c) of the Act explicitly charges the Secretary of Commerce with responsibility of revisions to the control list, which are the basis for U.S. proposals for the COCOM list review process. Technical expertise regarding revisions of the control list, as well as evaluations of license applications by foreign countries, reside with the Commerce Department. Commerce review of foreign cases submitted to COCOM is important to assure uniformity of licensing decisions and that U.S. exporters are not disadvantaged vis-a-vis their COCOM competitors, since cases often involve foreign products similar to, and in competition with U.S. exports licensed by the Secretary. Furthermore, section 2415 of this bill explicitly invests in the Secretary of Commerce the responsibility for determining which COCOM countries have effective systems.

In reaffirming the primacy of the Department of Commerce in administering the export control system, the conferees expect the Secretary to fulfill all of his responsibilities in accordance with the statute and the intent of Congress.

(c) Control List Reduction

(1) In General (sec. 332(f)(1) of House bill; section 2416 of Conference agreement)

Present law

The Department of Commerce has authority to remove items from the Control list.

House bill

The House bill requires DoC, in consultation with DoD, to identify the list of controlled items that are no longer significant to the military potential of any controlled country, and establishes as a goal a 40% reduction of the control list over 3 years. Within 6 months, decontrol is required of: 1) AEN items (as of 3/1/87) and 2) certain medical equipment. An annual report of decontrol actions is required.

Senate amendment

No provision.

Conference agreement

The conference agreement is the House provision requiring decontrol of AEN items (unless COCOM agrees to maintain notification requirements) and medical equipment, subject to the provisions of the new section 5(m) of the EAA.

While deleting the specific mandate to reduce the control list by 40%, the conferees reaffirm their strong belief in the need for a narrowing of the size and scope of the control list. The finding by the 1987 National Academy of Sciences panel that the current system encompasses too many products and technologies to be administratively feasible and that "U.S. national security controls are not generally perceived as rational, credible, and predictable by many of the nations and commercial interests whose active participation is required for an effective system," is a disturbing assessment in terms of both U.S. military security and America's economic vitality. The conferees believe that higher fences around fewer goods will be more effective in protecting U.S. national security and strengthening America's economic competitiveness. Both credibility and enforcement of controls will be enhanced by a reduction in the scope of controls.

As a step toward achieving this goal, the conferees specifically require the removal from control of low-technology items for which COCOM requires only notification for export to controlled countries (AEN items) and certain medical instruments and

equipment. The conferees intend that these actions are only part of what will become a concerted Executive branch effort to rationalize and streamline the control list, thereby enhancing U.S. and Allied enforcement efforts.

(2) Elimination of Unilateral Controls (sec. 332(f)(2) of House bill; sec. 1009 of Senate amendment; section 2416 of Conference agreement)

Present law

Section 5(e)(2) of the EAA states that licenses are required only if goods are controlled pursuant to multilateral agreement, other countries do not possess such capabilities, or the U.S. is seeking multilateral agreement for control.

House bill

The House bill eliminates unilateral controls six months after the enactment date or six months after imposition, except for controls on goods or technology for which there is no foreign availability, or if negotiations are underway for multilateral control (controls may be extended for one additional 6-month period for multilateral negotiations).

Senate amendment

The Senate amendment states that unilateral controls should be eliminated unless there is no foreign availability or negotiations are underway to achieve multilateral control; requires publication in Federal Register and justification of unilateral controls where controls are not eliminated.

Conference agreement

The conference agreement is the House provision with an amendment to extend the time for multilateral negotiations for one additional six month period.

With respect to this provision, the Senate conferees understand that while it sets out a general rule, controls may be extended if necessary to complete successful negotiations. The House conferees understand that the statutory language is clear in providing a maximum of 12 additional months for multilateral negotiations.

(3) Review of Certain Low Technology Items (sec. 1010 of Senate amendment; section 2416 of Conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires items below PRC green line to be reviewed at least once every two years; if such review has not been conducted but is requested by an individual, DoC has 90 days to determine whether controls should be continued, or the item is decontrolled.

Conference agreement

The conference agreement is the Senate provision.

PRC Trade Shows (sec. 332(h) of House bill; sec. 1011 of Senate amendment; section 2417 of Conference agreement)

Present law

No provision.

House bill

The House bill requires the Secretary to approve licenses for the export of U.S. goods or technology to the People's Republic of China for the purpose of demonstration or exhibition at a trade show if the exporter: retains title to and control of the good while in PRC, and removes the good at the conclusion of the trade show.

Senate amendment

The Senate amendment is similar to the House provision but requires that a "presumption of approval" be applied in evaluating license applications for exports of goods or technology to trade shows in the PRC sponsored by a U.S. trade association. The exporter must retain title to the good while in the PRC and remove the good at the conclusion of the trade show.

Conference agreement

The conference agreement is the Senate provision, with an amendment to apply the provision to any trade show in the PRC.

The conferees intend that the Secretary exercise his authority to give the full benefit of the presumption of approval to U.S. exporters. This provision will help encourage U.S. trade associations to organize trade shows in the PRC in order to exhibit technology and equipment which may become available to the PRC as COCOM limits on exports to that country are eased.

Foreign Availability (sec. 332 (i) & (j) of House bill; sec. 1012, 1013, 1017, 1018 of Senate amendment; section 2418 of Conference agreement)

(a) Determinations (sec. 332(i)(1) of House bill; sec. 1012 of Senate amendment; section 2418 of Conference agreement)

Present law

The EAA directs DoC to identify goods or technology available outside the U.S., eliminate sources of availability through negotiations, or if unable to do so, to decontrol available items. No specific timeframes are specified unless TAC-certified.

House bill

The House bill requires DoC to make a foreign availability determination within 120 days after receipt of allegations of foreign availability, notify applicant and publish in Federal Register. A maximum of 8 months is provided to complete the foreign availability decontrol process, including multilateral review, with the exception of situations in which negotiations are underway.

Senate amendment

The Senate amendment requires DoC to make a foreign availability determination within 120 days after receipt of allegation of foreign availability, notify applicant and publish in Federal Register.

Conference agreement

The conference agreement is an amendment rewriting section 5(f) of the EAA to specify the process for foreign availability determinations. Upon receipt of an allegation of foreign availability, the Secretary shall submit for publication in the Federal Register notice of such receipt, and within 4 months determine whether such availability exists and so notify the applicant making the allegation. Within 1 month after that determination, the Secretary shall notify the applicant and submit for publication his further determination that the foreign availability exists and (1) the requirement for a validated license has been removed; (2) the President has decided to maintain controls notwithstanding the foreign availability; or (3) the foreign availability determination has been submitted for mutilateral review for a maximum of 4 months; or that the foreign availability does not exist. No license for export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

(b) DoC Authority (sec. 332(i)(1); sec. 1012 of Senate amendment; section 2418 of Conference agreement)

Present law

The EAA contains authority for Secretary of Commerce to decontrol on basis of foreign availability.

House bill

The House bill clarifies that DoC does not need concurrence of other agencies to make foreign availability assessments.

Senate amendment

The Senate amendment clarifies DoC authority to make foreign availability determinations notwithstanding the approval of any other agency.

Conference agreement

The conference agreement is the House provision.

(c) Notification of Negotiation (sec. 1013 of Senate amendment; section 2418)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires Congressional notification of negotiations to eliminate foreign availability.

Conference agreement

The conference agreement is the Senate amendment.

(d) Availability in Particular Countries (sec. 332(i)(2) of House bill; section 2418 of Conference agreement)

Present law

No provision.

House bill

The House bill eliminates license requirements for exports of specific goods to a country that agrees to control those goods in a manner comparable to the U.S.

Senate amendment

No provision.

Conference agreement

The conference agreement is the House amendment.

(e) Publication of Foreign Availability Assessments (sec. 1012(d) of Senate amendment; section 2418 of Conference agreement)

Present law

No provision.

House bill

The House bill requires publication upon receipt of allegation or in certain instances of TAC certifications.

Senate amendment

The Senate amendment requires DoC to publish all foreign availability assessments in Federal Register.

Conference agreement

The conference agreement is the Senate provision.

(f) West-West Foreign Availability (sec. 332(i)(3) of House bill; sec. 1017 of Senate amendment; section 2418 of Conference agreement)

Present law

The EAA requires decontrol of goods available to controlled countries from sources outside the U.S.

House bill

The House bill provides for fast-track licensing of goods determined to be available in Free World countries.

Senate amendment

The Senate amendment establishes a parallel structure for foreign availability in non-controlled countries that provides for decontrol under conditions similar to proposed foreign availability guidelines, including the same timeframes, requirements for publication, and negotiations to eliminate availability; and also includes provision regarding licensing in cases of foreign availability.

Conference agreement

The conference agreement is a compromise amendment that incorporates the Senate's separate provision for West-West availability determinations, with procedures similar to those for determining foreign availability in controlled countries, along with the expedited licensing provided in the House bill.

(g) Information Sharing (sec. 332(i)(4) of House bill; sec. 1018 of Senate amendment; section 2418 of Conference agreement)

Present law

The EAA contains existing requirements to furnish foreign availability information.

House bill

The House bill clarifies that agencies are to share information in making foreign availability assessments.

Senate amendment

The Senate amendment is similar to the House provision.

Conference agreement

The conference agreement is the House provision with an amendment clarifying DoC access to information from government laboratories.

(h) Goods Affected by Determination (sec. 332(i)(5) of House bill; section 2418 of Conference agreement)

Present law

No provision.

House bill

The House bill eliminates controls on goods less sophisticated than items for which foreign availability has been determined.

Senate amendment

The Senate amendment contains a similar provision for West-West foreign availability.

Conference agreement

The conference agreement is the House provision.

(i) Definition of Foreign Availability (sec. 332(j) of House bill; section 2418 of Conference agreement)

Present law

No provision.

House bill

The House bill clarifies that foreign availability includes availability in any country from which the good is not restricted for export or in which such restrictions are ineffective.

Senate amendment

The Senate amendment contains a similar provision for West-West foreign availability.

Conference agreement

The conference agreement is the House provision.

Review of Technology Levels (sec. 332(g) of House bill; sec. 1014 of Senate amendment; section 2419 of Conference agreement)

Present law

The EAA requires that DoC shall periodically review procedures for multiple export licenses.

House bill

The House bill provides a mechanism for exporters to petition DoC to review goods eligible for export under a distribution license; determination required within 90 days.

Senate amendment

The Senate amendment requires DoC to conduct annual reviews of performance levels (PRC green & COCOM decontrol level) and make appropriate adjustments.

Conference agreement

The conference agreement combines the House and Senate provisions to require the Secretary to conduct annual reviews of performance thresholds and provide a mechanism for exporters to petition DoC to revise such thresholds.

Functions of Technical Advisory Committees (sec. 332(e) of House bill; section 2420 of Conference agreement)

Present law

Section 5(h) of the EAA established Technical Advisory Committees to advise and assist the Executive branch.

House bill

The House bill requires TACs to be consulted on revisions of the control list and the submission of regulations to appropriate TACs.

Senate amendment

No provision.

Conference agreement

The conference agreement is the House provision.

Negotiations With COCOM (sec. 332(l) (1) of House bill; sec. 1015 of Senate amendment; section 2421 of Conference agreement)

(a) Negotiating Objectives

Present law

Section 5(i) provides a list of COCOM negotiating objectives.

House bill

The House bill adds as negotiating objectives enhanced cooperation on restricting controlled exports, coordination of planning and implementation of export control measures, removal of items widely available from the control list, and expansion of categories and levels of goods eligible for export to PRC.

Senate amendment

The Senate amendment contains identical negotiating objectives as House bill with the exception of PRC trade expansion.

Conference agreement

The conference agreement is the Senate provision. (Complete list of COCOM negotiating objectives contained in section 2446 of Conference agreement.)

(b) Industry Representative to COCOM

Present law

No provision.

House bill

The House bill requires the President to include industry advisors on the U.S. delegation for COCOM list review meetings, unless other COCOM members exclude industry representatives from COCOM negotiations.

Senate amendment

No provision.

Conference agreement

The conference agreement provides that the President may include industry advisors on the U.S. deleglion to COCOM for the purpose of list review.

Goods Containing Microprocessors or Certain Other Parts and Components (sec. 332(m) of House bill; sec. 1016 of Senate amendment; section 2422 of Conference agreement)

Present law

Section 5(m) of the EAA specifies that goods containing embedded microprocessors may be controlled on the basis of the function of the good but not solely because the goods contain a microprocessor.

House bill

The House bill expands provision to prohibit controls on goods containing controlled parts and components if the parts are essential to the functioning of the good and are customarily included in sale of the good, unless the functional characteristics of the whole good would make a significant contribution to the military potential of a controlled country.

Senate amendment

The Senate amendment is similar to the House bill with the additional requirement that the parts and components comprise less than 20% of the value of the good.

Conference agreement

The conference agreement is the Senate provision, with an amendment that the parts and components comprise less than 25% of the value of the good. In broadening current law regarding goods containing microprocessors, the conferees recognize that technological advances have caused a shift from the use of proprietary embedded microprocessors to operate products to the use of commercial and proprietary components, such as microprocessors, microcomputers, personal computers, and disc drives to operate systems, often as peripheral and plug-in components. This statutory change broadens the language of section 5(m) to accommodate these advances within the constraint that the components be no more than 25% of total value.

Foreign Policy Controls (sec. 1019 of Senate amendment; section 2423 of Conference agreement)

Present law

Section 6 of the EAA provides authority to impose, expand, or extend foreign policy controls.

House bill

No provision.

Senate amendment

The Senate amendment encourages the President to seek diplomatic alternatives before imposing, expanding, or extending unilateral foreign policy controls for items available from other sources; extends decontrol of replacement parts under sec. 5(e) of EAA to foreign policy-controlled items if not controlled independently.

Conference agreement

The conference agreement is the Senate provision, with the addition of an amendment that requires the President, at the time he or she imposes new controls or expands existing controls, to determine

whether such controls apply to replacement parts.

Exports of Domestically Produced Oil (sec. 331 of House bill; section 1020 of Senate amendment; section 2424 of Conference agreement)

Present law

Exports of crude oil from Alaskan North Slope are prohibited in the absence of a Presidential finding and joint Congressional resolution.

House bill

Exports of all domestically produced crude oil are prohibited subject to Presidential finding. Refined petroleum products produced by export refinery are also subject to same restrictions.

Senate amendment

No provision on crude oil. No restrictions may be imposed on refined products of refineries on or before date of enactment except by Presidential determination.

Conference agreement

The conference agreement requires the Secretary of Commerce, in consultation with the Secretary of Energy, to study whether existing restrictions on crude oil exports from the lower contiguous 48 states are adequate to protect U.S. national security and energy interests.

The conferees further agreed to permit, subject to entry into force of the U.S.-Canada Free Trade Agreement, the export of up to 50,000 barrels per day of Alaskan North Slope crude oil to Canada pursuant to such agreement.

The conferees also agreed to restrictions on refined petroleum exports. A refinery commencing operations in Alaska after the date of enactment will be prohibited from exporting more than 50% of its annual output of refined and partially refined petroleum products made from Alaskan North Slope crude oil, excluding sales to the U.S. military and to U.S. flag airlines. In any case, without exclusion of U.S. military and flag airline sales, exports of refined and partially refined products made from Alaskan North Slope crude oil by all Alaskan refineries commencing operations after the date of enactment shall not exceed in aggregate an annual average of 70,000 barrels per day, allocated on a first-come, first-served basis.

The restriction on exports of refined and partially refined products does not apply to ethane, propane and butane that has been passed through a separation facility. This exception was added to ensure that this restriction would not preclude the construction in Alaska of a separation facility as part of a project to recover additional natural gas liquids from the Prudhoe Bay gas produced with the crude oil. This exception was not intended and should not be construed to provide authority for any refinery described in paragraph (4)(A) to export any quantity of ethane, propane or butane in excess of the limitations imposed under paragraph (4).

The amendments made by this Act do not affect current policy regarding the export of refined or partially refined petroleum products produced by refineries located in the rest of the nation. At the same time, the conferees wish to prevent sham "transshipment" transactions which are used to circumvent the restrictions on exports from Alaska established in paragraph (4).

Procedures for License Applications (sec. 332(n) of House bill; sec. 1021 of Senate amendment; section 2425 of Conference agreement)

(a) Review of License Applications by the Secretary of Defense

Present Law

(1) Section 10(g)(1) provides authority for DoD to review exports to any country to which exports are controlled for national security purposes. (2) No mandatory timeframes specified for resolution of interagency disputes. (3) Section 10(g)(4) of EAA requires the President to report to Congress whenever DoD is overruled.

House bill

The House bill: (1) Clarifies that DoD's authority to review licenses is for exports to controlled countries; (2) Specifies timeframe within which parties must act upon licenses; failure to do so results in Secretary of Commerce's authority to approve or deny license; (3) Eliminates Presidential reporting requirement when overruling DoD.

Senate amendment

The Senate amendment: (1) Contains no provision; (2) Specifies that DoC shall approve or deny licenses if DoD does not act within specified timeframe; (3) Also eliminates Presidential notification requirement when overruling DoD.

Conference agreement

(1) The conference agreement deletes the House provision clarifying the authority of the Defense Department to review exports to countries to which exports are controlled for national security purposes. The conferees do so without prejudice to different interpretations of the statutory authority for DoD to review exports to countries other than controlled countries.

The conferees concurred that whenever the Department of Defense reviews any license application, the nature and extent of such review shall be limited to national security, not foreign policy, considerations. Since the 1985 Memorandum of Understanding between DoD and DoC regarding review of Free World license applications, concern has been expressed that DoD's objections have been based on foreign policy grounds, rather than on [whether proposed exports would contribute to the military potential of a controlled country] national security grounds.

(2) To address the continuing problem of timely resolution of disputes, the conferees agreed to place time limits on all parties for decisions on export license applications. The amendment provides that if the Secretary of Defense fails to make a recommendation or notification within the 20 day period specified, or if the President fails to notify the Secretary that he approves or disapproves the export, the Secretary shall then act upon the license application.

(3) The conferees agreed to eliminate the Presidential reporting requirement when overruling DoD. Ensuring a final resolution of disputed issues is an important goal; once the President has reviewed and decided a issue, that decision should be implemented.

(b) Report by the Secretaries of Commerce and Defense

The conferees agreed to require the Secretaries of Commerce and Defense, within 6 months of enactment, to evaluate and jointly report to the Congress on the process for reviewing, for national security reasons, export license applications to destinations other than controlled countries, and the role played by the Department of Defense in such review.

While the EAA clearly states that to the maximum extent possible, the Commerce Department should make licensing decisions without referral to other agencies, there are situations when other departments are included in specific licensing decisions. Under a Memorandum of Understanding between the Departments of Commerce and Defense of January 1985, and subsequent related documents, the Commerce Department refers to DoD applications for certain exports to a list of specified Free World countries. In order to evaluate the effect of such concurrent review from the standpoint of redundancy and effectiveness, the conferees have directed the two agencies, in consultation with the Secretary of State as appropriate, to evaluate and provide a detailed report to the Congress. The conferees intend such report to compel the Administration to review the functioning of such concurrent review, and to provide a factual basis in order to evaluate the effect of such joint review.

(c) Report on Small Business

Present law

Section 10(m) of EAA requires the Secretary of Commerce to report on a plan to assist small businesses with export licensing process.

House bill

No provision.

Senate amendment

Section 3905 of the Senate bill required the Secretary to develop procedures to assist small businesses with the export licensing system.

Conference agreement

The conference agreement is to require the Secretary to report on implementation of the plan developed under section 10(m) to assist small businesses.

Violations (sec. 334 of House bill; sec. 1023 of Senate amendment; section 2426 of Conference agreement)

Present law

The EAA authorizes DoC to bar persons convicted of specified laws (including the Arms Export Control Act) from applying for or using export licenses under EAA.

House bill

The House bill extends DoC authority to EAA and IEEPA violations and clarifies that parties related through affiliation, ownership, or control to any person convicted of violations of the law also be denied export privileges after due process.

Senate amendment

The Senate amendment is identical to the House bill in extending to EAA & IEEPA, but contains a broader definition of parties related through affiliation.

Conference agreement

The conference agreement is to extend to DoC the authority to bar persons convicted of EAA and IEEPA violations from applying for or using export licenses, and to extend such authority to parties related through affiliation, ownership, control, or position of responsibility to any person convicted of violations, upon a showing of such relationship and subject to procedures in section 13(c) of EAA.

Enforcement (sec. 335 of House bill; section 2427 of Conference agreement)

Present law

No provision.

House bill

The House bill prohibits the Customs Service from seizing or detaining for more than 10 days goods or technology that DoC has determined are eligible for export under a general license.

Senate amendment

No provision.

Conference agreement

The conference agreement is to prohibit the Customs Service from detaining for more than 20 days items eligible for export under a general license. In cases where such detention is due to disagreements between the Secretary and other agencies, such disagreements are to be resolved within 20 days, after which the Customs Service shall release the items or seize the goods or technology as authorized by other provisions of law.

Administrative Procedure and Judicial Review (section 2428 of Conference agreement)

(a) Judicial Review (section 1024 of Senate amendment; section 2428 of Conference agreement)

Present law

The EAA is exempt from Administrative Procedures Act.

House bill

No provision.

Senate amendment

The Senate amendment provides limited judicial review for civil penalties & temporary denial orders except for actions taken under specified EAA sections.

Conference agreement

The conference agreement provides limited judicial review for civil penalties and the imposition of temporary denial orders.

(b) Issuance of Temporary Denial Orders (sec. 336 of House bill; sec. 1025 of Senate amendment; section 2428 of Conference agreement)

Present law

Section 13 of the EAA authorizes DoC to issue an order (TDO) denying for 60 days the right to export if necessary to prevent imminent violation of EAA.

House bill

The House bill extends the effective period of TDOs from 60 to 180 days.

Senate amendment

The Senate amendment expands the standard for TDO from "imminent violation" to "facilitate enforcement of this Act".

Conference agreement

The conference agreement is the House provision.

Responsibilities of Under Secretary for Export Administration (sec. 1026 Senate amendment; section 2429 of Conference agreement)

Present law

Section 15 of the EAA required the appointment of an Under Secretary of Commerce for Export Administration by October 1, 1987.

House bill

No provision.

Senate amendment

The Senate amendment clarifies the delegation of authority to the Under Secretary to include functions under other statutes that relate to national security.

Conference agreement

The conference agreement is the Senate provision. It is the intent of the conferees that the Under Secretary for Export Administration shall oversee all national security/export-related programs previously administered by the Assistant Secretary for Trade Administration. Such national security and defense preparedness programs include: investigations to determine the effect of imports on the national security under section 232 of the Trade Expansion Act of 1962, as amended; industrial preparedness programs authorized under the Defense Production Act of 1950, as amended; the Critical Materials and Stock Piling Act of 1979, as amended; and other programs designed to ensure that U.S. industry is able to meet national security requirements.

Authorization of Appropriations (sec. 332 (k) and 337 of House bill; sec. 1027 of Senate amendment; section 2430 of Conference agreement)

Present law

Section 18(b) authorizes annual appropriations to carry out functions under EAA.

House bill

The House bill authorizes an additional $3 million in FY 88 for the sole purpose of foreign availability functions, and also establishes a Western regional office with authority to issue licenses for national security-controlled exports that are not subject to interagency or multilateral review; to provide assistance to U.S. exporters, and to render advisory opinions; activities of office are to be included in annual report.

Senate amendment

The Senate amendment clarifies the Under Secretary for Export Administration's responsibility for short supply controls, and Defense Production Act programs; authorizes $45,248,000 for FY 88 & 89 for export administration, of which $5 million is designated for startup costs of the Under Secretary.

Conference agreement

The conference agreement authorizes $46,913,000 for fiscal year 1989 of which $15,000,000 shall be available only for enforcement; $5,000,000 shall be available only for foreign availability assessments; $4,000,000 shall be available for regional export control assistance centers; and $22,913,000 shall be available for all other activities under the Act.

Termination Date (section 2431 of Conference agreement)

Present law

Current authority expires September 30, 1989.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement extends the authorization of the Export Administration Act by one year to September 30, 1990.

Monitoring of Wood Exports (sec. 338 of House bill; section 2432 of Conference agreement)

Present law

No provision.

House bill

The House bill requires DoC to monitor and report monthly on exports of processed and unprocessed wood to Pacific Rim countries for 2 years.

Senate amendment

No provision.

Conference agreement

The conference agreement is the House provision.

National Academy of Sciences Study on National Security Export Controls (sec. 339 of House bill; section 2433 of Conference agreement)

Present law

No provision.

House bill

The House bill requires the President to appoint within 60 days of enactment an Export Administration Reform Commission to assess current control system and recommend changes.

Senate amendment

No provision.

Conference agreement

The conference agreement directs the Secretaries of Commerce and Defense to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of national security export controls.

The agreement reflects concerns by the conferees that national security, U.S. competitiveness, and Western technological preeminence are not well-served by the current export administration system, which is burdened by ambiguous criteria, overlapping jurisdictions, and a cumbersome decision- and policy-making apparatus.

The conferees recognize that regulating exports of U.S. goods and technology is an exceedingly difficult and costly task. A poorly administered and cumbersome program can undermine America's competitiveness, and can lead to reduced R & D funding and a decline in the rate of technological innovation in key sectors of the economy, thereby endangering U.S. national security. Conversely, serious breaches of the export control program can do severe harm to national security, especially in the near-term. In this regard, the conferees are seeking more than another study on export controls; instead, the conferees seek a detailed roadmap which provides specific and long-term solutions to the dilemmas of administering the export control program.

The conferees note that certain aspects of the study may parallel recent efforts by the CIA in assessing Soviet technology requirements for new weapons systems. This is important since criteria for establishing national security controls on U.S. technology and products should consider their potential contribution to Soviet military capabilities. Once the Academies have an inventory of the technologies that make crucial differences to Soviet military capabilities, a comprehensive set of criteria can aid in evaluating which of these technologies should be controlled and which technologies should no longer be controlled. It is not enough to examine and make judgements on which technologies should be controlled. The conferees also want the Academies to examine the administration of the export control program. Can decision-making be made more timely and efficient? How can the information base of the relevant industries be more effectively integrated into the policy process? What are the appropriate administrative measures to deal with decision-making when questions of competiveness and national security cannot be answered

with certainty? The answers to these and other questions should give the Congress and the President the information necessary to structure a vigorous and credible export control program that balances the objectives of both U.S. competitiveness and U.S. national security.

Findings and Policy Statements (sec. 340 of House bill; section 2433 of Conference agreement)

Present law

Sections 3 and 4 of the EAA sets forth statements of findings and policy.

House bill

The House bill makes statements of policy and findings, and amends the EAA concerning national security export controls based on findings of National Academy of Sciences report on export controls.

Senate amendment

No provision.

Conference agreement

The conference agreement is the Senate position.

GAO Report (section 1028 of Senate amendment;)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the GAO to report on the effect of amendments in this bill by March 1, 1989.

Conference agreement

The conference agreement is the House position.

PART 2—MULTILATERAL EXPORT CONTROL ENHANCEMENT

Short title (sec. 1029 of Senate amendment; section 2441 of Conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

"Multilateral Export Control Sanctions Act of 1987."

Conference agreement

"Multilateral Export Control Enhancement Amendments Act."

Findings (sec. 1030 of Senate amendment; section 2442 of Conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment finds that the GATT recognizes actions necessary to protect essential security interests; that Soviet efforts to acquire advanced technology threaten Western security and require effective multilateral controls; that in light of the Toshiba-Kongsberg diversion, U.S. sanctions must be imposed to ensure compliance of foreign companies with multilateral controls; and the U.S. Government must take steps to improve the system of multilateral controls maintained pursuant to CoCom.

Conference agreement

The conference agreement is the Senate provision with an amendment. The findings note the serious adverse impact of the diversion by Toshiba Machine Company and Kongsberg Trading Company on Western security interests; the need for effective CoCom enforcement, including effective national control systems and internal control systems for corporations; and that the United States must take steps to ensure CoCom compliance including, where necessary conditions are met, inposition of sanctions against foreign violators of CoCom controls.

Mandatory sanctions against Toshiba and Kongsberg (sec. 1031 of Senate amendment; section 2443 of Conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment applies sanctions against Toshiba Corporation, Kongsberg Vaapenfabrikk and any other firm or individual found to have violated CoCom regulations between January 1, 1980 and the date of enactment that resulted in a serious adverse impact on the strategic balance of forces. Sanctions include both debarment from contracting with any agency or instrumentality of the U.S. Government and a ban on imports for two to five years. The President may exempt certain transactions from sanctions including essential defense procurement, prior contracts, spare parts, etc. The President may also limit sanctions for any parent, affiliate or subsidiary of a sanctioned party if they have not violated CoCom regulations, the government of jurisdiction improves its export control efforts, the sanctioned party and related parties improve internal export control systems and the impact of sanctions is proportionate to the increased defense expenditures imposed on the United States. A parent company may only be excused from sanctions upon payment of compensation. The President shall report to the Congress on actions under this section every six months.

Conference agreement

The conference agreement is the Senate provision with an amendment specifying sanctions in the Toshiba-Kongsberg case, and eliminating application of the provisions to other cases. After the date of enactment, mandatory sanctions are applied for three years against Toshiba Machine Company, Kongsberg Trading Company, and any other foreign persons whom the President finds knowingly facilitated this diversion. Sanctions include a prohibition on contracting and procurement by any department, agency or instrumentality of the U.S. Government and a prohibition on importation into the United States. In the case of the parent corporations, Toshiba Corporation and Kongsberg Vaapenfabrikk, a three-year prohibition on contracting and procurement by the U.S. Government is imposed.

In specifying sanctions, rather than providing a broad sanctions mandate to the President, the Conferees have limited the original scope of the Senate provision. Sanctions are no longer applied to subsidiaries, affiliates, successor entities, or joint ventures of Toshiba Corporation or Kongsberg Vaapenfabrikk, only to their guilty subsidiaries, Toshiba Machine Company and Kongsberg Trading Company, and the parent corporations themselves. Sanctions are applied to the parent corporations in recognition of their responsibility for the actions and management practices of their subsidiaries.

While a limited number of exceptions to sanctions are provided to protect U.S. security and commercial interests, the Conferees intend that these be tough sanctions that will punish the sanctioned companies for their violation of CoCom regulations. The Conferees view these measures as taken to further U.S. national security interests not as retaliation for trade purposes.

In the case of the prohibition on purchases by the U.S. Government, the Conferees intend that there be no evasion of sanctions by indirect purchase through a U.S. or foreign person, by repackaging or relabeling products of a sanctioned person (except as provided below) for sale by another party, or by creation of successor entities for the sale of banned items. The intent to exclude indirect purchase does not extend to U.S. or foreign products of non-sanctioned persons that include parts or components from a sanctioned party as long as those parts or components have been substantially transformed, within the meaning of Customs regulations, during production of the finished product. It is likewise the intent of Conferees that there be no evasion in the case of a prohibition of importation.

In order to protect U.S. national security interests and minimize the collateral impact of sanctions on U.S. companies, the Conferees provided exceptions for a range of transactions for which the President shall not apply sanctions. The Conferees have made no attempt to specify a system for administering these exceptions but, within the parameters of the sanctions imposed, intend to limit the impact of sanctions on U.S. companies to the extent possible. Therefore, the exceptions mechanisms should be as administratively simple as possible, focusing on reporting of shipments rather than pre-shipment licensing, but with the clear understanding that violations are subject to appropriate criminal penalties.

An exception is provided for procurement of defense articles or sérvices under existing contracts, that are sole source, or essential to national security under coproduction agreements. This exception is intended to permit essential defense procurement to proceed.

Exceptions also apply to products or services provided under contracts or other binding agreements entered into before June 30, 1987; spare parts; component parts, but not finished products, essential to U.S. products or production; routine servicing and maintenance; or information and technology. All of these exceptions are intended to limit unnecessary hardship to U.S. industry and consumers as a result of sanctions, while maintaining a general ban on products of the sanctioned party. It is the intent of the Conferees that the exception for technology could include sole source situations.

The exception for contracts or other binding agreements permits execution of agreements entered into before sanctions were adopted by the Senate last year. Exact definition of covered arrangements is left to subsequent regulation. The Conferees intend that the term binding agreement include an established or continuing relationship that is well docmented. Following this logic, the Conferees intend that established business relationships between a sanctioned party and U.S. original equipment manufacturers or equivalent firms be covered by the exception. Such a situation would exist where: 1) the sanctioned person is providing products designed to the U.S. firm's specifications and marketed under its trademark, brand, or name; 2) the business relationship

existed for at least 12 months prior to imposition of sanctions and can be clearly documented; and 3) the U.S. firm is not directly or indirectly owned or controlled by the sanctioned party. This exception would not cover sales of sanctioned products under a franchise arrangement where U.S. technology or specifications are not involved, nor would it cover more casual supply arrangements.

The exception for component parts permits continued use of parts from a sanctioned party in U.S. products or production. This is intended to avoid either a reduction in U.S. production or employment arising from a cutoff of essential parts or denial to a U.S. consumer of a part essential to the effective functioning of a product. The term "component part" is defined in the statute with a two-part test that it is: 1) any article that is not usable for its intended functions without being embedded or integrated into another product; and 2) if the part was used in production of a finished product, it would be substantially transformed, within the meaning of Customs regulations, during production.

The Conferees wish to specify that the component part exemption does not cover finished products, defined as articles usable for their intended functions without being imbedded in or integrated into any other product. In defining "finished product" in statute, the language again emphasizes that a product subject to sanctions would not be an article produced by a person other than the sanctioned party that contains parts or components of the sanctioned party as long as they have been substantially transformed during production of the finished product.

Mandatory Sanctions for Future Violations (sec. 1032, 1033 and 1036 of Senate amendment; section 2444 of Conference agreement)

Present law

The trade Expansion Act of 1962, as amended, provides import sanctions authority to the President. Sanctions may be applied against a foreign person only if the President fails to negotiate remedies with the government of jurisdiction, takes the case to CoCom and proposes sanctions, and only authorizes imposition of sanctions in the absence of an objection from a majority of the other CoCom countries.

House Bill

No provision.

Senate amendment

The Senate amendment amends section 5 of the Export Administration Act of 1979 to require mandatory sanctions for two to five years in any case where credible evidence indicates that a foreign person has violated CoCom regulations and the violation has resulted in a serious adverse impact on the strategic balance of forces. Sanctions include both debarment from contracting with any agency or instrumentality of the U.S. Government and a ban on imports produced by the sanctioned party. The President may exempt certain transactions from sanctions including essential defense procurement, prior contracts, spare parts, etc. The President may also limit sanctions for any parent, affiliate or subsidiary of a sanctioned party if they have not violated CoCom regulations, the government of jurisdiction improves its export control efforts, the sanctioned party and related parties improve internal export control systems and the impact of sanctions is proportionate to the increased defense expenditures imposed on the United States. A parent company may only be excused from sanctions upon payment of compensation. The President shall report to the Congress on actions under this section every six months.

The President is provided discretionary authority to impose a ban on both U.S. Government procurement and all imports for up to five years from a foreign person determined to have violated CoCom rules. This authority applies to diversion not determined to rise to the level of seriousness in the case of mandatory sanctions.

In the case of manadatory sanctions, the President is directed to enter into negotiations for compensation with the sanctioned party and its government of jurisdiction. In any case of an EAA or CoCom violation that reduces U.S. defense preparedness, the Secretary of Defense is directed to assess U.S. defense losses and the Attorney General is directed to seek damages in a U.S. district court in an amount not to exceed U.S. defense losses.

Conference agreement

The conference agreement is the Senate provisions with several amendments. A new section 11A, "Multilateral Export Control Violations," is added to the 1979 Act requiring sanctions for two to five years against any foreign person in any case in which the President determines the person has violated CoCom regulations and the violation has resulted in a serious adverse impact on the strategic balance of forces. This provision applies to all violations occurring after the date of enactment that the President determines rise to the requisite level of seriousness. The President's determination should cover all parties directly involved including persons, such as trading companies or other intermediaries, whom the President finds knowingly facilitate a diversion. The President is to notify the Congress of each action taken under this section.

Sanctions include a prohibition on contracting and procurement by any department, agency or instrumentality of the U.S. Government and a prohibition on importation into the United States. As with the sanctions under section 2443, the Conferees recognize the serious step taken in imposing sanctions. This is not intended to be a casual step triggered without careful consideration by the President. Sanctions would only be applied in cases of sufficient seriousness that the President determines that a sale of critical technology had substantially enhanced the capabilities of controlled countries in critical technologies that would have a serious adverse impact on the strategic balance of forces.

When these circumstances are met, the Conferees intend that tough sanctions be applied that will punish the sanctioned companies for their violations of CoCom regulations. As with the sanctions in section 2443, the Conferees view these measures as essential to presevation of vital national security interests, not as retaliation for trade purposes. The exceptions to sanctions provided to protect U.S. security and commercial interests are intended to be limited and not to be interpreted so as to significantly dilute the impact of sanctions.

The specification of sanctions is as in section 2443(a)(1) for sanctions against Toshiba Machine Company and Kongsberg Trading Company, and the above description of those sanctions applies equally to this section. The Conferees provide a limited number of exceptions to protect U.S. security and commercial interests, but do not intend to substantially dilute the punishment of sanctioned companies for their violation of CoCom regulations. The description of exemptions in section 2443 also applies here except that the date before which contracts and other binding agreements in force are protected is the date on which the President notifies the Congress of the intention to impose sanctions. The Conferees intend that neither the sanctioned party nor the firm's customers be given notice of sanctions prior to their imposition that would enable them to evade sanctions by quickly signing new orders and contracts. As with retroactive sanctions, the exemptions mechanism should be as administratively simple as possible, but with the understanding that violations are subject to appropriate penalties, including those of the Export Administration Act.

In addition to a list of exceptions from sanctions, the provision also provides a limited exclusion from sanctions for countries whose governments have been determined by the President to have had an effective export control system in effect at the time of a violation. The President would have to determine that the government of jurisdiction had strong export control laws, effective licensing including necessary resources to assure thorough technical assessment and reliability of end-users, effective enforcement, thorough export control documentation, and procedures for coordination within CoCom on violations. If such a system were in effect, then sanctions would apply only against the single foreign person who violated CoCom regulations, not to any parent, affiliate, subsidiary or successor company that had not knowingly been involved in the violation.

This limitation is intended to narrow the application of this provision for governments cooperating fully with CoCom export control and enforcement efforts. The necessary elements of the determination by the President are identical to the findings necessary for a CoCom or 5(k) country to be accorded license-free status under section 2415(a) by the Secretary of Commerce. The Conferees intend that there be one list of countries that would qualify for the favorable treatment under sections 2415(a) and 2444("11A(d)"). Therefore, it is the expectation of Conferees that the list of countries found to qualify for narrower application of sanctions by the President under this section will correspond to the list of countries eligible for delicensing under section 2415.

Sanctions may be subsequently modified by the President under certain circumstances. The President may limit sanctions applied to a parent, affiliate, subsidiary or successor entity of the foreign person determined to have violated CoCom rules where that party has not knowingly violated the CoCom rules, the government of jurisdiction has improved its export control system, the foreign person has instituted improved internal controls, and the impact of sanctions imposed is proportionate to increased U.S. defense expenditures. Only after thorough assessment of steps taken pursuant to the criteria in the law should any of the sanctions be lifted.

The President may not modify sanctions in two situations. Full sanctions against the foreign person determined to have violated CoCom rules must be maintained for the minimum two-year sanctions period. In addition, a ban on government purchases from the parent corporation must also be maintained for two years, unless the President had previously made the determination necessary for the exclusion in section 2444 ("11A(d)"). In that case, only the sanctions

on the foreign person determined to have violated CoCom rules would either be imposed or maintained.

In addition to the mandatory sanctions described above, section 2444 provides discretionary sanctions authority for cases that may not rise to the level of "serious adverse impact on the strategic balance of forces" in the determination required in section 2444(a). Under this provision, the President may apply an import ban or government procurement ban for up to five years against a foreign person the President determines has violated CoCom rules.

This authority replaces the more limited authority provided in the Trade Expansion Act of 1962, which is deleted. It also subsumes the discretionary government procurement ban adopted by the Senate in section 1022 of its amendment. This authority does not apply only to violations that occur after the date of enactment since it replaces an authority already in force. The President has this authority ready if needed to address any violation that comes to light in the future.

In the event that the President imposes sanctions under this section, the conference agreement provides that an additional series of steps be taken to address the problems created by the sale of technology and loss of U.S. defense preparedness. First, if mandatory sanctions are imposed, the President must initiate discussions with the sactioned party and its government regarding compensation in an amount proportionate to increased Western defense costs and must report to the Congress. Second, in any case in which sanctions are applied, the President must consult with the violator's government of jurisdiction to seek prompt remedial action; with CoCom governments to ensure similar violations are avoided in the future; and with the Congress on actions taken to rectify the situation. Finally, in the case of mandatory sanctions, the Secretary of Defense must determine the costs of restoring U.S. military preparedness and notify the Attorney General. The Attorney General is empowered to bring action for damages in U.S. district court, the amount awarded not to exceed total U.S. defense costs arising from the diversion and the action to commence no later than three years after the violation or one year after its discovery, whichever is later.

Annual Report of Defense Impact (sec. 1034 of Senate amendment; section 2445 of Conference agreement)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires an annual report of the President estimating additional U.S. defense expenditures arising from illegal technology transfers, especially those resulting in mandatory sanctions.

Conference agreement

The conference agreement is the Senate provision.

Improved Multilateral Cooperation (Sec. 1035 of Senate amendment; section 2446 of Conference agreement)

Present law

Section 5(i) of the 1979 Act sets a nine-point negotiating agenda for strengthening CoCom.

House bill

No provision.

Senate amendment

The Senate amendment establishes an action program for negotiations to improve the functioning and standard of cooperation of CoCom.

Conference agreement

The conference agreement is the Senate provision with an amendment further elaborating the goals for agreement in CoCom.

Technical and Conforming Amendments (section 2447 of Conference agreement)

Present law

Discretionary sanctions authority is provided in the Trade Expansion Act of 1962. A ban on Defense procurement from Joshiba Corporation and Kongsberg Vaapenfabrikk is included in the Continuing Resolution for 1988.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement strikes the sanctions language in section 233 of the Trade Expansion Act of 1962 and sections 8124 and 8129 of the 1988 Continuing Resolution.

SUBTITLE E—MISCELLANEOUS PROVISIONS

TRADING WITH THE ENEMY ACT

(Sec. 361 of the House bill; Sec. 2501 of the Conference Agreement)

Present law

Section 39 of the Trading with the Enemy Act established an Office of Alien Property to litigate and adjudicate World War II claims. All World War II claims activities have ended.

House bill

Section 361 of the House bill provides for the termination of alien property activities, transfers remaining funds to the Treasury, and repeals various reporting requirements in existing law.

Senate amendment

No provision is contained in the Senate amendment.

Conference agreement

The conference agreement is identical to the House provision.

LIMITATION ON EXERCISE OF EMERGENCY AUTHORITIES

(Sec. 362 of the House bill; Sec. 2502 of the Conference Agreement)

Present law

The Passport Act authorizes controls on exports and imports of informational material not otherwise regulated under the Export Administration Act. Presently, regulations exempt controls on the export and import of informational material.

House bill

Section 362 of the House bill clarifies that the Trading with the Enemy Act and the International Emergency Economic Powers Act do not authorize regulations on the export or import of informational material not otherwise controlled under the Export Administration Act.

Senate amendment

The Senate amendment contains no provision.

Conference agreement

The conference agreement is identical to the House provision.

BUDGET ACT

(Sec. 364 of the House bill; Section 2503 of the Conference Agreement)

Present law

Present law contains no such provision.

House bill

Section 364 of the House bill provides that any new spending authorized by this act be subject to appropriations acts.

Senate amendment

The Senate amendment contains no provision.

Conference agreement

The conference agreement is identical to the House provision.

TITLE III—INTERNATIONAL FINANCIAL POLICY

SUBTITLE A—EXCHANGE RATES AND INTERNATIONAL ECONOMIC POLICY COORDINATION

House bill

Section 401-408 of the House bill requires the President to negotiate with other countries to improve the coordination of macroeconomic policies, to improve exchange rate stability, and to achieve exchange rates and macroeconomic policies consistent with an appropriate and substantial level of foreign borrowing, as reflected by the current account balance. The House bill provides that, as appropriate, coordinated intervention in currency markets shall be utilized as a tool to bring the dollar to acceptable levels. The House bill requires the President to initiate bilateral negotiations with countries that tie their currencies to the dollar to obtain arbitrary competitive advantage. These negotiations shall seek to ensure that such countries regularly and promptly adjust their currencies to eliminate the arbitrary advantage. The Secretary of the Treasury is required to submit written reports to Congress twice a year to explain and defend his exchange rate policy and to propose exchange rate and other economic policies consistent with an appropriate and sustainable current account balance. The Secretary is also required to undertake country-by-country analyses of the exchange rate and economic policies of foreign countries.

Senate amendment

Sections 1301-1305 of the Senate amendment provide that the Secretary of the Treasury shall seek to confer and negotiate with other countries to achieve better coordination of macroeconomic policies of the major industrialized countries and sustainable levels of trade and current account balances and stability in the exchange rates of the dollar and other currencies. The Senate amendment also provides that the Secretary shall determine on an annual basis which countries manipulate the rate of exchange between their currencies and the U.S. dollar for purposes of preventing effective balance of payments and adjustments or gaining unfair competitive advantage in international trade. If such countries have material global current account surpluses and significant bilateral trade surpluses with the United States, the President shall take action to initiate negotiations with such countries to ensure that they regularly and promptly adjust the rate of exchange between their currency and the U.S. dollar. The Senate amendment also provides that the Secretary shall submit an annual written report to Congress on international economic policy.

Conference agreement

The Conferees intend for the exchange rate and the level of foreign borrowing to become matters of conscious policy rather than inadvertent side-effects of other polices. The legislation takes an important step in this direction by establishing as an important policy goal the achievement of macroeconomic policies and more stable exchange rates consistent with a more appropriate and sustainable balance in the current account. By establishing a policy goal against which economic policy decisions affecting the exchange rate can be measured, it is the intent of the Congress to increase the accountability of the Secretary of the Treasury for economic policies that affect the nation's level of foreign borrowing and its trade balance.

While the Conference Agreement requires the Secretary of the Treasury to initiate negotiations with countries that manipulate their currencies, the legislation also provides that the Secretary is not required to initiate such negotiations if he determines doing so would have a serious detrimental impact on vital national economic and security interests. In such cases, he must so notify the Congress. While the Conference Agreement requires the Secretary to report on factors in foreign economies which underlie current market developments, it does not require a country-by-country analyses of the exchange rate and other economic policies of foreign countries.

INTERNATIONAL NEGOTIATIONS ON EXCHANGE RATE AND ECONOMIC POLICY

Multilateral Negotiations

The Conference Agreement provides that the President shall pursue international negotiations with other countries to improve the coordination of macroeconomic policies; to achieve macroeconomic policies and more stable exchange rates consistent with a more appropriate and sustainable current account balance; and to improve the functioning of the exchange rate system and existing mechanisms for coordination.

It is the intent of the Conferees that the achievement of exchange rate and macroeconomic policies consistent with a more appropriate and sustainable balance in the U.S. current account become a priority in international economic negotiations. The Conferees note that serious currency misalignments have arisen under the existing exchange rate system and believe that the United States cannot hope to resolve resulting problems unilaterally.

It is the belief of the Congress that greater coordination and harmonization of economic policies among the United States, the Europeans, Japan, Canada and other major industrialized countries are the only practical ways of preserving relative exchange rate stability at levels consistent with a more appropriate and sustainable current account balance. Such coordination will prove impossible without serious international negotiations on this issue. The Conferees are pleased that the G-7 nations (the United States, Japan, Canada, Germany, the United Kingdom, France and Italy) are consulting more actively on this problem.

It is the intention of the Conferees to facilitate and encourage current efforts in this direction, and to ensure that they become part of a broader effort to negotiate necessary changes in exchange rate and other macroeconomic policy at the international level.

It is the expectation of the Conferees that the Secretary will work constructively through the negotiating process to achieve modifications in the exchange rate system and in coordination mechanisms that will help provide for greater long-term exchange rate stability at levels consistent with more appropriate and sustainable balances in trade and capital flows. The Conferees also anticipate that the Secretary will recommend proposals to achieve better coordination of macroeconomic policies among the major industrialized nations and greater stability in trade and current account balances and in the exchange rates of the dollar and other currencies. The Conferees will monitor the Secretary's progress in these negotiations through the semi-annual reports required under the Conference Agreement.

Bilateral Negotiations

More than half of all U.S. trade is with countries whose currencies have not substantially appreciated against the dollar since January 1985. In particular, the exchange rates of some of the Asian Newly Industrializing Countries (NICs) have not reflected their major surpluses with the United States and the world and have actually fallen against other major currencies, placing tremendous competitive pressure on all other manufactured goods producers. To a large degree, continued low exchange rates have meant a competitive advantage for these countries in the U.S. market.

It is the view of the Conferees that some way must be found to ensure that the exchange rates of the currencies of these countries more closely reflect sustainable current account performance. In the interim, the Conferees believe that increased U.S. bilateral pressure appears to be an appropriate, effective, and important tool.

The Conference Agreement, therefore, requires the Secretary of the Treasury to make an assessment on an annual basis as to whether countries are manipulating their currencies to prevent balance of payments adjustments or gain arbitrary competitive advantage. If the Secretary considers that to be the case in regard to countries which have material global current account surpluses and significant bilateral trade surpluses with the United States, the Secretary is required to initiate negotiations with such countries on an expedited basis to ensure that they regularly and promptly adjust the rate of exchange between their currency and the United States dollar to permit effective balance of payments adjustments and to eliminate the unfair advantage.

The Secretary shall not be required to initiate negotiations in cases where he determines that such action would have a serious detrimental impact on vital national economic and security interest, but must notify the Congress of such determination.

Reporting Requirement

The Conference Agreement requires the Secretary of the Treasury, after consultation with the Chairman of the Federal Reserve, to report semi-annually to the Congress on progress in achieving exchange rates consistent with more appropriate and sustainable levels in the current account through changes in domestic and international economic policy. In these reports, the Conferees would expect the Secretary to explain and defend his international economic policy, including his exchange rate policy, and to propose economic policies designed to bring the nation's annual foreign borrowing and trade balance to more acceptable levels.

This new semi-annual report by the Secretary of the Treasury on policies affecting exchange rates and foreign borrowing should resemble and complement the current semi-annual report by the Chairman of the Federal Reserve Board on monetary policy. The legislation also requires that the Federal Reserve Board Chairman address exchange rates and foreign borrowing in his own semi-annual report to Congress.

The Conferees note that the Secretary of the Treasury is responsible for policies that most affect exchange rates and foreign borrowing. He negotiates international agreements to coordinate economic policies and to reform international financing markets. He decides when intervention in foreign exchange markets is appropriate. Equally important, he develops national economic policies that affect domestic capital markets and borrowing needs. In each of these three critical areas, the Conferees would expect the Secretary to describe recent progress and the policies he will pursue in the future in his semi-annual reports.

In the early 1980s, exchange rates became severely misaligned, at great cost to many industries and to the nation's indebtedness. At the same time, the Conferees recognize that changing the exchange rate or reducing foreign borrowing may affect interest rates or other aspects of the domestic economy. The conferees believe that the interrelationship between other economic policies and the exchange rate of the dollar must be considered and policy priorities continually reassessed.

It is the intent of the Conferees, through this reporting requirement, to increase the accountability of the Executive Branch regarding the impact of the exchange rate on foreign borrowing and the competitive position of U.S. industries, as reflected in the nation's trade and current account balances. The Conference Agreement requires that the Secretary of the Treasury assess that impact and elaborate upon the choices made in regard to domestic policies that have clear effects on the exchange rate. The Conferees expect the Secretary to delineate for the Congress those changes in exchange rate or macroeconomic policy necessary to achieve more acceptable levels of foreign borrowing and improvement in our trade balance, and justify decisions made to implement or not implement such changes.

The success of this legislation hinges on the process of reporting and consultation by the Secretary of the Treasury with Congress. The Conferees recognize that this process will be modified with experience. However, certain key elements appear to be necessary for a meaningful debate on exchange rate policy.

Under the Conference Agreement, the Secretary must assess the impact of the exchange rate of the United States dollar on: (1) the ability of the United States to maintain a more appropriate and sustainable balance in its current account and merchandise trade account; (2) production, employment, and non-inflationary growth in the United States; and (3) the international competitive performance of United States industries and the external indebtedness of the United States.

If the exchange rate of the dollar is inconsistent with policy goals in these important areas, the Conferees would expect the Secretary to discuss the reasons for the inconsistency, and make policy recommendations regarding any necessary changes. Such a discussion will require analysis of economic factors in the United States and other countries that underlie the exchange rate situation, such as the components of U.S. savings

and investment and their trends and developments in bilateral trade and capital flows.

To properly undertake such an analysis, the Secretary must make an assessment regarding the acceptability of the nation's level of foreign borrowing and trade balance, as reflected in the U.S. current account balance. The Secretary must, therefore, consider how much the United States should borrow or lend annually from the rest of the world on a long-term basis. That would require an assessment of how much borrowing/lending was both "appropriate" for purposes of the growth of the U.S. economy and "sustainable" for the foreseeable future.

The Conference Agreement requires the Secretary to recommend changes in economic policy that would permit the United States to attain a more appropriate and sustainable current account balance and assess the costs and benefits of each alternative. The Conferees would expect the Secretary to pursue exchange rate and other economic policies consistent with this goal, or explain his reasons for not doing so. Through this structure of accountability, the Conferees hope to focus attention on the impact of alternative policies.

This requirement is intended to emphasize both the connection between the exchange rate and trade problems on the one hand and the shared responsibility of the Administration and Congress in regard to domestic economic policy choices. Proper emphasis on this interrelationship between exchange rates and other economic policies will help us achieve the needed coordination and harmonization of macroeconomic policies at the international level.

The Conference Agreement states it to be U.S. policy that the United States, in close coordination with the other major industrialized countries should, where appropriate, participate in international currency markets with the objective of producing more orderly adjustment of foreign exchange markets and, in combination with necessary macroeconomic policy changes, assisting adjustment toward a more appropriate and sustainable balance in current accounts. Without compromising necessary secrecy regarding intervention tactics, the Conferees expect a general report on any intervention undertaken similar to that subsequently issued by the Federal Reserve Bank of New York concerning the intervention conducted after September 22, 1985.

Similarly, without detracting from U.S. negotiating leverage or disclosing information exchanged in confidence in government-to-government deliberations, the Conferees call for a full report on the results of negotiations required under the legislation, including a report on the results of bilateral nogotiations with countries that manipulate their currencies to obtain arbitrary competitive advantage. If no progress is made in the negotiations, the Conferees expect that the Secretary will provide an explanation.

The Secretary is to submit the initial written report on international economic policy, including exchange rate policy, on October 15 of each year. The Secretary shall provide a written update of developments six months after the initial report, on or before April 15 of each year. In addition, the Secretary shall appear, if requested, before the Banking Committees of the House and House and Senate to provide testimony on these reports.

The Conferees would expect that, if circumstances have substantially changed since the initial report in October, the written update required after six months would include a comprehensive treatment of all of the issues required to be addressed in the reports.

As our trade and Federal budget deficits have both grown larger, the United States has attracted increasing inflows of foreign capital which have created a growing repayment burden that is reflected in the current account. While much attention has routinely been focussed on trade flows, the Conferees believe that the independent significance of capital flows and their impact have not been given sufficient attention in policy discussions. Adequate information is a necessary prerequisite to deliberations on these issues. The Conference Agreement, therefore, requires the Secretary, after consultation with the Chairman of the Federal Reserve Board, to submit to the House and Senate Banking committees annual statistical reports on international capital flows and the impact of such flows on exchange rates and trade flows.

SUBTITLE B—INTERNATIONAL DEBT

PART I—FINDINGS, PURPOSES, AND STATEMENT OF POLICY

House bill

Section 412 of the House bill contains a statement of findings. Section 413 contains a statement of purposes. The House bill contained no statement of policy on international debt.

Senate amendment

Section 1701 of the Senate bill contains a statement of findings, Section 1702 contains a statement of purposes, and Section 1703 contains a statement of policy.

Conference Agreement

The House recedes to the Senate on findings, purposes, and statement of policy.

PART II—THE INTERNATIONAL DEBT MANAGEMENT AUTHORITY

International Initiative

House bill

Section 423 of the House bill provides that the Secretary of the Treasury shall initiate negotiations with industrialized and developing countries to propose the establishment of a multilateral financial intermediary described in the section.

Senate amendment

Section 1712 of the Senate amendment provides for the Secretary of the Treasury to study the feasibility and advisability of establishing the multilateral financial authority described in the section. Unless the Secretary makes certain determinations described in the section, the Secretary will initiate discussions with such industrialized and developing countries as the Secretary may determine to be appropriate with the intent to negotiate the establishment of the multilateral financial authority described in the section.

Conference Agreement

The House recedes to the Senate with amendments which require the two interim reports by the Treasury Secretary on the progress being made by the Secretary on the study or discussions be submitted to the House and Senate Banking Committees and the Senate Foreign Relations Committee at the end of the six month period beginning on the date of enactment of the Act and at the end of the twelve month period beginning on such date of enactment, and that the Secretary consult with such Committees after submitting each such report. The Conference Agreement also provides that after the interim reports have been submitted the Secretary shall submit a final report to the House and Senate Banking Committees and the Senate Foreign Relations Committee.

Actions to Facilitate Creation of the Authority

House bill

Section 424(a) of the House bill provides that the Secretary of the Treasury shall direct the U.S. Executive Director of the World Bank and the IMF to determine the amount of, and alternative methods by which, liquid assets controlled by the Bank and the gold stock of the Fund could be pledged as collateral to obtain financing for the activities of the authority described in Section 432.

Senate amendment

Section 1713 of the Senate amendment provides that the Treasury Secretary, except as restricted in the section, shall review all potential resources available to the multilateral financial institutions which could be used to support the creation of the International Debt Management Authority, including directing the U.S. Executive Directors to the World Bank and the IMF to make the same determinations provided in the House Bill.

Conference Agreement

The House recedes to the Senate with an amendment that the section shall not be construed to affect any provision of the Articles of Agreement of the IMF or the World Bank or any agreement entered into under either of such agreements. The Conferees intend that the restriction in the section applies only to capital contributions or guarantees which the United States Government might provide for the establishment of the International Debt Management Authority, subsequent to the discussions required pursuant to Section 3111. The Conferees further intend that the provision restricting the accrual of expenses refers only to the voluntary nature of financial institution participation in the International Debt Management Authority.

World Bank-IMF Review

The Conferees agreed that the U.S. Executive Directors to the IMF and the World Bank shall request the managements of those institutions each to prepare a review and analysis of the debt burden of the developing countries, with particular attention to alternatives for dealing with the debt problem including new lending instruments, rescheduling and refinancing of existing debt, securitization and debt conversion techniques, discounted debt repurchase and the International Debt Management Authority described in Section 3111 no later than 1 year after the date of enactment of this Act.

PART III—REGULATORY PROVISIONS AFFECTING INTERNATIONAL DEBT

House bill

Section 422 of the House bill contains four sense of the Congress resolutions on: regulatory objectives for banks with loans to heavily indebted developing countries; flexibility in debt restructuring; recapitalization by banks with loans to debtor countries; and appropriate levels of reserves for loan losses for banks engaged in lending to heavily indebted developing countries; as well as a study by the Federal banking regulatory agencies to determine the extent of any regulatory obstacles of negotiated reductions in the debt service obligations associated with sovereign debt. The House bill contains no

statement of policy and no provision on debt for equity exchanges.

Senate amendment

Section 1721 of the Senate amendment contains a statement of policy, Section 1722 contains a provision on the facilitation of debt for equity exchanges, Section 1723 contains a regulatory study by the Treasury and the Federal banking agencies of possible regulatory steps to encourage a reduction in the indebtedness of heavily indebted international borrowers, and Section 1724 contains an amendment to Section 913 of the International Lending Supervision Act of 1983 requiring an annual report by the Federal banking agencies of the level of loan exposure by U.S. commercial banks to loans placed in troubled debt categories by the banking agencies.

Conference Agreement

The Senate receeds to the House on the statement of policy and the provision on debt for equity exchanges contained in the Senate amendment. The Senate recdes to the House on the four sense of Congress resolutions contained in the House bill. The Senate receedes to the House on the regulatory study with an amendment shortening the study to an analysis of regulatory and accounting obstacles to various forms of debt restructuring, including (but not limited to) negotiated interest reduction, amortization of loan losses, securitization and debt conversion techniques, and discounted debt repurchases as well as an analysis of the profitability of commercial bank lending to developing countries during the 10 year period 1976-1986. The House recedes to the Senate provision amending Section 913 of the International Lending Supervision Act.

Limited Purpose Special Drawing Rights for the Poorest Heavily Indebted Countries

House bill

Section 421 of the House bill contains provisions which provide that the Treasury Secretary, in consultation with the directors and staff of the IMF, shall conduct a study of the feasibility of reducing the international debt of the poorest of the heavily indebted countries through a one-time allocation by the IMF of limited purpose Special Drawing Rights to such countries.

Senate amendment

Section 2008 of the Senate amendment contains similar provisions.

Conference Agreement

The Senate recedes to the House.

Subtitle C—Multilateral Development Banks

House bill

Section 313 requires the Secretary of Commerce in consultation with the Secretary of Treasury to appoint a member of the U.S. and Foreign Commerical Service to each U.S. executive director's office at the multilateral development banks. The purpose is to promote U.S. exports by gaining improved access for U.S. firms to MDB procurement opportunities. Responsibilities would include dissemination of procurement information and better coordination between the Department of Commerce and Treasury.

Section 424 is similar in intent to Section 313 but would give Treasury the lead role in appointing a commercial officer to each MDB (who is not necessarily a member of the U.S. and Foreign Commerical Service). The officer's responsibilities would include dissemination of bidding information, and investigation of complaints lodged by U.S. firms.

Senate amendment

Section 1201(c) expresses the sense of the Congress that a U.S. and Foreign Commercial Service Officer should be assigned to each U.S. executive director's office at the MDBs. The Secertary of Commerce would appoint such officer and it would be the officer's reponsibility to disseminate procurement bidding information.

Section 1203 requires the Secretary of Commerce to designate an International Trade Administration office to serve as a liasion to the MDBs headquartered outside Washington, D.C. Responsibilities would be similar to those described in Section 1201(c).

Section 1801 provides that the Secretary of Commerce in consultation with Treasury shall appoint a Foreign Commercial Service Officer to serve with each of the U.S. executive directors at the MDBs. This section would also establish an Office of Procurement within the Treasury Department to act as a liasion with the commercial officers and provide technical assistance on procurement opportunities to U.S. firms (particularly small and medium sized).

Conference Agreement

The Conference Agreement stipulates that a member of the U.S. and Foreign Commercial Service or representative of the International Trade Administration be appointed by the Secretary of Commerce to serve with each U.S. executive director of the MDBs. It shall be the responsibility of each such officer or representative to disseminate procurement information such as bidding specifications and deadlines and to ensure that relevant information reaches U.S. firms which have a competitive advantage with regard to specific projects.

The Conference Agreement also stipulates that the U.S. executive directors to the MDBs attach a high priority to promoting procurement opportunities for U.S. firms with regard to MDB procurement. The Secretary of the Treasury is also directed to designate an Officer of Procurement within the Office of International Affairs at the Treasury Department. It shall be the responsibility of this officer to coordinate and cooperate with the Department of Commerce in efforts to improve opportunities for MDB procurement by U.S. companies. This second portion of the Conference Agreement is contained in Section 3202.

SUBTITLE D—EXPORT-IMPORT BANK AND TIED AID CREDIT AMENDMENTS

AMENDMENTS TO THE TRADE AND DEVELOPMENT ENHANCEMENT ACT OF 1983

House bill

The Trade and Development Enhancement Act of 1983 established tied aid programs requiring the Agency for International Development (AID) in conjunction with the Export-Import Bank to provide tied aid financing. Section 451 of the House bill changes the voting procedures of the National Advisory Council on International Monetary and Financial Policies (NAC) from a unanimous consent requirement to a majority consensus for approval of tied aid financing; requires a semiannual report from the President to Congress on activities relating to the tied aid credit program as established by the 1983 Act; allows the President to terminate tied aid program after notifying Congress; and lifts the cap on AID's access to Economic Support Funds for tied aid.

Senate amendment

The Senate amendment contains no similar provisions.

Conference Agreement

The Conference Agreement amends the Export-Import Bank Act of 1945 to provide for a one-year extension of the authority for the Tied Aid Credit Fund, also known as the 'war chest,' which was established within the Export-Import Bank in 1986. The Conference Agreement also requires the Chairman of the Export-Import Bank to work with appropriate international organizations such as the World Bank, the International Monetary Fund, and the Organization for Economic Cooperation and Development (OECD) to prepare a report on tied aid credit practices of other countries.

The Conferees extended the "war chest" authority because the authority is due to expire in September 30, 1988. The Conferees are concerned that the practice of using tied aid credits as predatory financing by foreign countries is increasing despite the fact that there was a consensus reached at the OECD in 1987 to tighten the rules governing tied aid credits. The extension would not require any additional budget authority because the funds will come out of the existing authority for direct loans. That means that if the OECD arrangement proves to be effective, the fund does not have to be used. Finally, the reporting requirement would enable the Congress to remain informed on this issue and make any necessary revisions in policy before the end of the one-year extension.

REPORT ON U.S. EXPORTS TO DEVELOPING COUNTRIES

A. Findings and Purpose

House bill

Section 452(a) of the House bill states that Congress finds the debt problem of developing countries has seriously limited their ability to import and commercial banks have withdrawn from financing U.S. exports. The findings also state that it is important for the U.S. Export-Import Bank to increase its ability to assume a broader range of risks and to encourage the private sector to do the same. Section 452(b) provides that the purpose of the section is to require the Export-Import Bank to identify any policy and financing programs that would facilitate additional financing of U.S. exports to debt burdened developing countries as part of an overall debt management strategy.

Senate amendment

The Senate amendment contains no similar provision.

Conference Agreement

The House recedes to the Senate.

B. Report Required

House bill

Section 452(c) of the House bill requires the President of the Export-Import Bank to submit a report to the House and the Senate Banking Committees before the end of the 90 day period beginning on the date of enactment of this Act. The report shall contain an assessment of the effectiveness of recent program changes in increasing U.S. exports to developing countries; an identification of additional policy and program changes that would enable the Export-Import Bank to increase financing of U.S. exports to developing countries and encourage greater private sector participation in this effort; and an assessment of the viability and cost of such programs. The

provision also includes specific requirements for the viability assessment including: setting up a separate class of programs through which debt burdened countries or U.S. exports to them would receive preferential treatment; introducing less stringent repayment standards; and expanding Eximbank's guarantee authority to allow it to assume part of the exposure of commercial banks to debtor countries.

Senate amendment

The Senate amendment contains no similar provision.

Conference Agreement

The Senate recedes to the House with an amendment. The Conference Agreement does not require that this report contain the viability assessment.

AMENDMENTS TO SECTION 2(E) OF THE EXPORT-IMPORT BANK ACT OF 1945

A. Time for Determining Supplies

House bill

The House bill contains no provision.

Senate amendment

Section 1106(a) of the Senate amendment amends the Export-Import Bank Act of 1945 to provide that the Export-Import Bank shall be concerned about extending loans or loan guarantees for production of certain commodities in foreign countries when the product is first to be sold on the world market rather than when production capacity is expected to become operative.

Conference Agreement

The House recedes to the Senate.

B. Making Comparative Injury Determinations

House bill

The House bill contain no provision.

Senate amendment

Section 1106(b) of the Senate amendment requires the Exports-Import Bank when making a determination of injury to specify both the long and short term injury to U.S. producers and to U.S. employment.

Conference Agreement

The House bill recedes to the Senate.

C. Definition of Substantial Injury for Export-Import Bank Determination

House bill

The House bill contains no provision.

Senate amendment

Section 1106(c) of the Senate amendment provides that the extension of any credit or guarantee by the Export-Import Bank will result in substantial injury if that credit or guarantee is responsible for the establishment or expansion of production equal to or in excess of 1% of U.S. production.

Conference Agreement

The House recedes to the Senate.

SUBTITLE E—EXPORT TRADING COMPANY ACT AMENDMENTS

House bill

Section 477 of the House bill provides that an export trading company would not have to meet the "operating principally" test during its first two years of operation. The House bill prohibits the Federal Reserve from establishing a determination period of less than four years during which an export trading Company would have to comply with the "operating principally" test. The House bill would also provide that the determination period for a specific export trading company would not begin until after the first two years of operation of a bank export trading company's operation.

The House bill would modify the Federal Reserve Board's policy in determining whether income received by an export trading company would be considered as export income for purposes of the "operating principally" test. The Federal Reserve Board would be required to count as export income any fees received by an export trading company from facilitating trade between other nations. However, no more than one-half of an export trading company's export income could consist of fees obtained from facilitating third country trade.

The House bill would prohibit the Federal Reserve from dissapproving a bank holding company's investment in an export trading company soley because the proposed leveraging ratio is greater than 15:1. In addition, the House bill would prohibit the Federal Reserve Board from issuing regulations placing a dollar amount limitation on the inventory of export trading companies. The Federal Reserve Board would continue to be permitted to limit the dollar amount of the inventory of a specific export trading company if the Board found that the inventory level threatened the safety and soundness of a bank.

Senate amendment

Section 1101 of the Senate amendment would replace the existing "operating principally" test with a new two-part test. In order to comply with the new test an export trading company would be required to obtain more of its revenue from exporting U.S. produced goods or services or from facilitating the export of U.S. produced goods or services by providing export trade services than the company obtains from importing goods into the U.S. In addition an export trading company would have to obtain at least one-third of its revenue from exporting U.S. goods or services or from providing export trade services.

The Senate amendment would also require that an export trading company operate principally to export goods or services produced in the United States by the company, its affiliates or unaffiliated persons or to provide one or more export trade services to facilitate the export of goods or services produced in the United States by unaffiliated persons. The Senate amendment would restrict the ability of an export trading company to own shares in a company that engages in securities or insurance activities.

Section 1102 of the Senate amendment prohibits the Federal Reserve Board from dissapproving an investment in an export trading company solely because the leveraging ratio is greater than 20:1. Section 1103 of the Senate amendment contained a provision identical to the House provision restricting the ability of the Federal Reserve Board to regulate the inventory of export trading companies.

Conference Agreement

The Conference Agreement modifies current law to include standards to determine when an export trading company is considered to be operated principally for purposes of exporting. The provision allows a company to meet the standard so long as the company's revenues from exports exceed revenue from exports and at least one-third of the company's business is derived from the export of U.S. goods and services produced by an unaffiliated person or organization. Previously, the Federal Reserve Board implemented the statutory requirement that an export trading company be operated "principally" for purposes of exporting U.S. goods and services by requiring that a majority of the company's revenues be derived from exporting or facilitating the export of U.S. goods and services produced by persons other than the export trading company. The Conferees agreed that the Federal Reserve's regulations governing investments by bank holding companies in export trading companies accurately implemented the intent of the Congress in this regard in enacting the original statute. In light of the experience of bank-affiliated export trading companies since 1982, however, it was determined that such companies might benefit from additional flexibility in their operations.

The effect of the change in the statutory provision is to allow export trading companies to engage in facilitating more trade between countries other than the United States than was previously permitted. In agreeing to this change, the Conferees recognized that engaging in third country trade can be a useful adjunct to a firm's export business, in so far as it can lead to greater involvement in and knowledge of international markets by bank-related export trading companies.

The Conferees also recognized, however, that, in the course of gaining the necessary experience and knowledge in international markets, bank-related export trading companies should not change their focus from the primary goal of promoting U.S. exports. By including the requirement that export revenues exceed import revenues, and that at least one third of the firm's total revenues derive from assisting exporting by U.S. persons unaffiliated with the export trading company, the Conferees emphasize that the purpose of the statute continues to be to permit bank holding companies to invest in companies that offer services that facilitate the export of the goods and services of U.S. entities that would not otherwise have ready access to overseas markets for their products. By retaining the role of bank-affiliated export trading companies in facilitating the export of U.S. products, the Act should help to create an infrastructure in this country that may provide export trade services to all sectors of the U.S. economy.

The Conference Agreement contains the provision of section 477(a) of the House bill regarding the determination period. The Conference Agreement provides that an export trading company does not have to meet the "operating principally" test during the first two years of its operation, that the determination period should be for a period of not less than four years and that the determination period for a specific export trading company shall not commence until two years after the initial operations of the export trading company have begun.

The Conferees agreed to adopt the provision contained in Section 1102 of the Senate amendment which prohibits the Federal Reserve from disapproving an investment in an export trading company solely because the proposed leveraging ratio is greater than 20:1. The Conference Agreement also contains the provisions contained in Section 477(c) of the House bill and Section 1103 of the Senate bill concerning the authority of the Federal Reserve to regulate the inventory of an export trading company.

SUBTITLE F—PRIMARY DEALERS

House bill

Section 428 of the House bill would prohibit the Federal Reserve System from designating, or continuing any prior designation of, any person of a foreign country as a primary dealer in U.S. Government securi-

ties if the government of that country does not allow U.S. companies "equal access" in the acquisition of that government's debt instruments. "Equal access" would be defined as permitting U.S. companies both to acquire government debt instruments upon original issue, and to act in a capacity that is substantially equivalent to that in which the United States permits primary dealers to act. Section 428 would become effective six months after enactment.

Senate bill

Section 1502 of the Senate amendment would prohibit the Federal Reserve System from designating, or continuing any prior designation of, any person of a foreign country as a primary dealer unless the government of that country accords U.S. companies national treatment in the underwriting and distribution of its government debt instruments. A foreign government accords national treatment to U.S. companies if it accords them the same competitive opportunities as it accords to domestic companies.

Section 1502 differs from section 428 of the House bill in being based on national treatment rather than equal access; in containing a grandfather provision for previously designated primary dealers acquired by persons of a foreign country before January 1, 1987; in containing exceptions for Canada and Israel; and in taking effect two years, rather than six months, after enactment.

Conference Agreement

The House recedes to the Senate with an amendment (1) making this section effective one year after enactment, and (2) broadening the grandfather provision.

In the United States, a company may be designated as a primary dealer if it meets certain nondiscriminatory standards, such as demonstrating financial and managerial strength and a willingness to bid at Treasury auctions and to make a secondary market in U.S. Government securities. Of the 42 companies currently designated as primary dealers, at least 12 are foreign-controlled, including several Japanese companies. However, in some foreign countries, and particularly in Japan, U.S. companies face discrimination when seeking to underwrite and distribute government debt instruments. This section seeks to assure that U.S. companies engaged in those activities are accorded the same competitive opportunities as foreign governments accord to their domestic companies.

Subsection (a) makes findings relating to the discrimination that U.S. companies face in the underwriting and distribution of Japanese Government debt instruments. Although this section is prompted by concerns about discrimination in Japan, it applies to companies owned or controlled by any person of a foreign country, except as otherwise provided in subsections (b)(2) and (c).

Effective one year after enactment, subsection (b)(1) prohibits the Federal Reserve System from designating any person of a foreign country as a primary dealer, or continuing any prior designation of such a person as a primary dealer, unless the foreign country in question accords U.S. companies national treatment in the underwriting and distribution of government debt instruments issued by that country. The definition of national treatment in subsection (b)(1) is drawn from, and intended to have the same meaning as, the definition in the Treasury Department's *Report to Congress on Foreign Government Treatment of U.S. Commercial Banking Organizations.* In the Conferees' view, a country accords national treatment to U.S. companies only if it accords them the same competitive opportunities as it accords to its domestic companies. National treatment requires a pragmatic, effect-oriented test for assuring that the same competitive opportunities exist.

Subsection (b)(1) does not prohibit the Federal Reserve System from continuing the prior designation of a company as a primary dealer if a two-part test is satisfied. First, the company must have been designated as a primary dealer before July 31, 1987. Second, either of the following must have occurred before July 31, 1987: (A) a person of a foreign country must have acquired control of the company (from a person other than a person of a foreign country); or (B) the company, in conjunction with a person of a foreign country, must have informed the Federal Reserve Bank of New York that that person intended to acquire control of the company.

Four primary dealers that qualify under subsection (b)(2) were brought to the Conferees' attention: Aubrey G. Lanston & Co., Inc.; Greenwich Capital Markets, Inc.; Brophy, Gestal, Knight & Co., L.P.; and the First Boston Corporation.

Apart from the specific prohibitions of subsection (b)(1), this section does not impair the Federal Reserve's current discretion to designate or refuse to designate anyone as a primary dealer, or to continue or rescind anyone's designation as a primary dealer. Accordingly, the Federal Reserve retains the same discretion as it has under existing law to *rescind* a company's designation as a primary dealer, even if the company is grandfathered under subsection (b)(2) or excepted under subsection (c).

"Company", as used in this section, encompasses any business entity.

Government debt instruments are "issued by [a foreign] country" for purposes of subsection (b)(1) if they are issued by the national government of that country.

Primary dealers are currently designated by the Federal Reserve Bank of New York. But because the prohibitions of subsection (b)(1) extend to the Federal Reserve Board, they would apply even if primary dealers were designated by the Board or by some other unit of the Federal Reserve System.

Subsection (c) excepts a person of a foreign country from the prohibitions of subsection (b)(1) if the foreign country in question either (1) was negotiating a bilateral agreement with the United States, as of January 1, 1987, pursuant to section 102(b)(4)(A) of the Trade Act of 1974; or (2) has a bilateral free trade area agreement with the United States which entered into force before January 1, 1987. As of January 1, 1987, the United States was negotiating a bilateral agreement with Canada pursuant to section 102(b)(4)(A) of the Trade Act of 1974. A bilateral free trade area agreement between the United States and Israel entered into force in 1985. Accordingly, subsection (b) does not apply to a company because of that company being under Canadian or Israeli ownership or control.

Subtitle G—Financial Reports

QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS

House bill

Section 702 of the House bill requires the Secretary of Commerce and the Secretary of the Treasury, in consultation with the U.S. Trade Representative and the Securities and Exchange Commission, to determine which foreign countries have financial services institutions that are providing financial services in the U.S., and which U.S. institutions can offer the same services in these foreign countries. Commerce and Treasury shall submit separate reports within 120 days of enactment.

Senate amendment

Section 1504 of the Senate amendment provides that the Secretary of the Treasury shall report to Congress the extent to which foreign countries deny national treatment to United States banking organizations and securities companies, and on the efforts undertaken by the United States to eliminate such discrimination. The report is to be issued at least every 4 years, beginning on December 1, 1990, and is to be produced in conjunction with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission. Section 3854 of the Senate amendment requires the Federal Reserve to examine the impact of foreign financial and regulatory systems on the ability of U.S. businesses to compete in domestic and foreign markets.

Conference Agreement

The House recedes to the Senate with an amendment to require that the report include a discussion of the foreign countries whose financial institutions are providing services in the United States, and the kinds of financial services that are being offered.

FAIR TRADE IN FINANCIAL SERVICES

House bill

The House bill contain no provision.

Senate amendment

Section 1505 of the Senate amendment requires the President or his designee to conduct discussions with the governments of countries that are major financial centers to assure equity of access to foreign companies. These discussions are to be aimed at reducing or eliminating barriers to international trade in financial services, and to achieving reasonable comparability in the types of financial services which are permissible. any recommendations for changes in United States financial laws or practices which emerge from these discussions are to be reported to the committees of jurisdictions in the Senate and the House of Representatives.

Conference Agreement

The House recedes to the Senate.

FINANCIAL REPORTS—BANKS LOAN LOSS RESERVES

House bill

The House bill contains no provision.

Senate amendment

Section 1506 of the Senate amendment provides that the Federal Reserve Board shall conduct a study and report to Congress, by March 31, 1989, on the issues raised by including loan loss reserves as part of banks' primary capital. The report is to include a review of the treatment of loan loss reserves and composition of primary capital of banks in other major industrialized countries, and address the issue of whether loan loss reserves should continue to be counted as primary capital for regulatory purposes.

Conferees Agreement

The House recedes to Senate.

PROVISIONS NOT INCLUDED IN THE CONFERENCE REPORT

Export-Import Bank

House bill

Section 322 of the House bill expresses the sense of Congress on the importance of the availability of adequate and flexible financing provided by the U.S. Export-Import Bank for U.S.

Senate amendment

The Senate amendment contains no similar provision.

Conference Agreement

The House recedes to the Senate.

Structural Adjustment Lending

House bill

Section 6127(a) of the House bill directs the United States executive director of the World Bank to work with other executive directors of the Bank for the purpose of developing guidelines which minimize the adverse impact on the poor of structural adjustment loans. Structural adjustment loans (SALs) should incorporate innovative proposals designed to minimize the adverse impact of policy changes advocated through these loans, including provisions which remove barriers to credit for microenterprises and which promote environmentally sound development.

Senate amendment

The Senate amendment contains no similar provision.

Conference Agreement

The House recedes to the Senate. Substantially similar language was enacted within the Fiscal Year 1988 Continuing Resolution.

Small-scale Credit

House bill

Section 427(b) of the House bill directs the United States executive directors of the multilateral development banks to seek the establishment of mechanisms for making small-scale credit available to low-income groups in the developing countries which have not had previous access to such credit. In addition, a report is required from Treasury on the efficiency of SALs. The report is to also include data on the impact of SALs on low-income groups using a variety of different measures.

Senate amendment

The Senate amendment contains no similar provision.

Conference Agreement

The House recedes to the Senate. Similar statute was enacted within the Fiscal Year 1988 Continuing Resolution.

Mobilization of Private Capital

House bill

Section 432 of the House bill requires the United States executive directors of the MDBs to initiate discussions with other executive directors and propose greater use of cofinancing to encourage more commercial bank lending and steps to be taken to satisfy the credit needs of income generating microenterprises. In addition, the U.S. executive directors of the IMF and World Bank are to seek to increase the role of the Bank and Fund as intermediaries in generating new capital instruments for the benefit of the developing countries.

Senate amendment

The Senate amendment contains no similar provision.

Conference Agreement

The House recedes to the Senate. Similar provisions are included in the reporting requirements of Subtitle B, International Debt.

Multilateral Investment Guarantee Agency (MIGA)

House bill

Section 436-445 of the House bill would authorize United States membership to provide political risk insurance and advice on foreign investment regimes to member developing countries. MIGA would be administered as a semi-autonomous agency within the World Bank Group. The U.S. share as negotiated for participation in MIGA would be $44.4 million in paid-in capital.

Senate amendment

Section 1901-1911 of the Senate amendment provides for United States' membership in MIGA to be conditionally authorized. The Senate amendment while containing identical provisions relating to the negotiated U.S. membership in MIGA also adds conditional provisions which would preclude U.S. membership where they are not agreed to by the other MIGA members. These conditions include: no insurance or guarantees could be issued by MIGA if they would reduce the number of employees of the firm receiving the guarantee within the U.S.; no insurance or guarantee could be issued if exports to the U.S. would result and be competitive with similar U.S. production or if the country receiving such guarantees imposes trade distorting performance requirements or if the country in receipt of the insurance or guarantee fails to extend to its citizens internationally recognized workers rights. The Secretary of the Treasury would be precluded from depositing the instruments of ratification until the aforementioned conditions were incorporated into the rules and regulations of MIGA.

Conference Agreement

The Conferees agreed to delete the MIGA authorization from the Conference Agreement. U.S. conditional participation in MIGA was authorized and appropriated in the Fiscal Year 1988 Continuing Resolution.

Inter-American Development Bank

House bill

Section 446 would authorize the merger of the Inter-Regional and Ordinary Capital windows of the Inter-American Development Bank. Sec. 447 would direct the U.S. executive director of the IDB to propose that any country lending ceilings established in a new replenishment agreement could be waived if certain conditions are met.

Senate amendment

The Senate amendment contains no similar provision.

Conference Agreement

The House recedes to the Senate. The merger of capital was authorized in the Fiscal Year 1988 Continuing Resolution. The country lending ceiling provision is no longer necessary and the Conferees agreed to delete the provision.

Multilateral Investment Guarantee Agency Budget Offset

House bill

The House bill contain no provision.

Senate amendment

Section 2001 of the Senate amendment authorizes the appropriation of more than $11.6 million as paid-in capital for capital increases for the World Bank could be appropriated in FY 88.

Conference Agreement

Senate recedes to the House.

Foreign Agriculture Investment Reform (FAIR)

House bill

The House bill contains no similar provision.

Senate amendment

Section 2178-2180(a) of the Senate amendment requires the United States executive directors to the multilateral development banks to vote against loans which lead to the production of commodities in surplus on world markets. If the loan was approved over U.S. objections the U.S. would be precluded from participating in new funding agreements of the MDB in question. In addition, the U.S. would be required to subtract from its contribution to the Bank an amount equal to the amount of the loan multiplied by the percentage shareholding of the U.S. in that Bank. The MDB in question would also be precluded from issuing bonds in the U.S. market or bonds denominated in dollars. The above penalties could be averted if the Secretary of the Treasury certifies: that the commodity or mineral production financed by the loan is not in surplus on world markets; that the MDB in question has taken steps to assure that no such loans will be approved in the future; that assistance from sources other than the MDBs accompanies the assistance provided by the MDBs and in amounts sufficient to demonstrate the economic viability of such production; that the production, marketing or export of such commodities arising from MDB assistance is not subsidized as described within Articles V, XVI, and XXIII of the Geneva GATT agreement of April 12, 1979.

Conference Agreement

The Senate recedes to the House. Requirements for the United States' executive directors to vote against MDB loans which would lead to world surplus production when that production was intended for export was enacted in the Fiscal Year 1988 Continuing Resolution.

AMENDMENTS TO TITLE III OF THE EXPORT TRADING COMPANY ACT OF 1982

Present law

Title III of the Export Trading Company Act of 1982 provides for antitrust certification of certain joint export conduct by the Secretary of Commerce acting with the concurrence of the Attorney General.

House bill

No provision.

Senate bill

Section 1107 of the Senate bill amends the antitrust certification procedure in certain respects.

Conference Agreement

The conference substitute deletes the provision.

TITLE IV—AGRICULTURAL TRADE

SUBTITLE A—FINDINGS, POLICY, AND PURPOSE

(1) Short Title

The *Senate* amendment provides that the tile may be cited as the "Agricultural Competitiveness and Trade Act of 1987". (Sec. 2101)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment that changes the short title of the title to the "Agricultural Competitiveness and Trade Act of 1988". (Sec. 4001)

(2) Findings

The *House* bill contains proposed findings of Congress relating to the need for Agricultural Aid and Trade missions, as follows:

(1) United States agricultural exports have declined by more than 40 percent since 1981, from $43.8 billion in 1981 to $26.3 billion in 1986;

(2) the United States share of the world market for agricultural commodities and products has dropped by 28 percent during the last five years;

(3) for the first time in 15 years, the United States incurred monthly agricultural trade deficits in 1986;

(4) the loss of $1 billion in United States agricultural exports causes the loss of 35 thousand agricultural jobs and the loss of 60 thousand nonagricultural jobs;

(5) the loss of agricultural exports threatens family farms and the economic well-being of rural United States;

(6) to reverse the decline of agricultural exports and improve prices for United States farmers and ranchers, it is necessary that all agricultural export programs be used in an expeditious manner, including programs established under the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480), the Commodity Credit Corporation Charter Act, and section 416 of the Agricultural Act of 1949;

(7) greater use should be made by the Secretary of Agriculture of the authorities established under the Food for Peace Act of 1966, Agricultural Trade Development and Assistance Act of 1954, section 416 of the Agricultural Act of 1949, and the Commodity Credit Corporation Charter Act to provide intermediate credit financing and other assistance for the establishment of facilities in importing countries to—

(a) improve the handling, marketing, processing, storage, and distribution of imported agricultural commodities and products; and

(b) increase live stock production to enhance the demand for United States feed grains;

(8) food aid and export assistance programs stimulate economic activity in developing countries and, as incomes improve, diets improve and the demand for and ability to purchase food increases;

(9) private voluntary organizations and cooperatives are important and successful partners in our food aid and development programs; and

(10) in addition to meeting humanitarian needs, food aid used in sales and barter programs by private voluntary organizations and cooperatives—

(a) provides communities with health care, credit systems, and tools for development; and

(b) establishes the infrastructure that is essential to the expansion of markets for United States agricultural commodities and products. (Sec. 631)

The *Senate* amendment sets forth similar findings of the Congress. The *Senate* amendment also sets forth the finding that increasing exports is vital to the financial well-being of the farm sector and to increasing farm income. The amendment also provides that factors causing this loss of United States agricultural exports include changes in world markets such as the addition of new exporting nations, innovations in agricultural technology, increased use of export subsidies, existence of trade barriers, slowdown in growth of world food demand in the 1980's, and the rapid buildup of surplus stocks. (Sec. 2111)

The *Conference* substitute adopts the *House* provision with an amendment adding the two provisions of the *Senate* amendment. The *Conference* substitute also contains more recent trade figures. (Sec. 4101)

(3) Agricultural Trade Policy

The *House* bill provides that it is the policy of the United States to provide agricultural commodities for export at competitive prices; support the principle of free and fair trade in agricultural commodities; to support negotiating objectives set forth at sec. 111(b) of the *House* bill; to utilize fully existing authority to combat unfair trading practices; and to provide for increased representation of United States agricultural trade interests in the formulation of national fiscal and monetary policy affecting trade. (Sec. 318(a))

The *Senate* amendment provides that it is the policy of the United States to increase the volume of, and revenues from, agricultural exports; to gain a fair share of world agricultural trade based on competitive trade principles; to aggressively support programs designed to make United States exports more competitive abroad, including the agricultural export enhancement program, the export credit guarantee program, and direct credit programs; and to challenge before the appropriate panels of the General Agreement on Tariffs and Trade (the "GATT") barriers to agricultural trade that are illegal under, or inconsistent with, the GATT and to aggressively respond to changes in world market conditions and to increase exports and farm income. (Sec. 2111(b))

The *Conference* substitute adopts the *House* provision with an amendment that provides that it is the policy of the United States to seek the elimination of barriers to agricultural trade. (Sec. 4102)

(4) Purposes of Chapter

The *House* bill provides that is the purpose of chapter 1 of title VI of H.R. 3 (as enacted by the House) to increase the effectiveness of the Department of Agriculture in—

(1) agricultural trade policy formulation and implementation; and

(2) assisting United States agricultural producers to participate in international agricultural trade,

by strengthening the operations of the Department of Agriculture and related entities. (Sec. 601)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the House provision with an amendment making this section applicable to the entire title. The new provision provides that it is the purpose of the title to increase the effectiveness of the Department of Agriculture in agricultural trade policy formulation and implementation and in assisting United States agricultural producers to participate in international agricultural trade, by strengthening the operations of the Department of Agriculture; and to improve the competitiveness of United States agricultural commodities and products in the world market. (Sec. 4103)

SUBTITLE B—AGRICULTURAL TRADE INITIATIVES

GENERAL PROVISIONS

(5) Long term agricultural trade strategy reports

The *House* bill would require the Secretary of Agriculture to prepare for each fiscal year a long-term agricultural trade strategy report establishing recommended policy goals for United States agricultural trade and exports, and recommended levels of spending on international activities of the Department of Agriculture, for one-year, five-year, and ten-year periods. The President would be required to submit each annual report along with the budget for the fiscal year involved.

Each report would include the following:

(1) Findings with respect to trends in the comparative position of the United States and other countries in exports of agricultural commodities and products and new developments in research conducted by other countries that may affect the competitiveness of United States agricultural commodities and products.

(2) Findings and recommendations with respect to the movement of United States agricultural commodities and products in non-market economies.

(3) As appropriate, the agricultural trade goals for each agricultural commodity and value-added product produced in the United States (expressed both in physical volume and monetary value).

(4) Recommendations as to Federal policy and programs, and as to levels of Federal spending on international programs and activities of the Department of Agriculture and on programs and activities of other agencies, to meet the agricultural trade goals.

(5) Recommended long-term strategies for growth in agricultural trade and exports—

(a) taking into account United States competitiveness, trade negotiations, and international monetary and exchange rate policies; and

(b) including specific recommendations with respect to export enhancement programs (including credit and export payment-in-kind programs), market development activities, and foreign agricultural and economic development assistance activities needed to implement such strategies.

The provisions of each long-term agricultural trade strategy report that relate to recommended spending levels for Department of Agricultural international activities for the upcoming fiscal year would be treated as the President's annual budget submission to Congress for such programs for such fiscal year, and would be submitted in addition to the budget request for other Department of Agriculture programs for such fiscal year.

Under this provision, the President would be required, in each strategy report, to—

(1) include recommendations for changes in legislation governing Department of Agriculture international programs needed to meet the long-term goals established in the report; and

(2) identify any such recommendations that might modify the long-term policy in any previous report. (Sec. 607)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision (Sec. 4201)

(6) Technical assistance in trade negotiations

The *House* bill would require the Secretary of Agriculture to provide technical services to the United States Trade Representative on matters pertaining to agricultural trade and with respect to international negotiations on issues relating to agricultural trade. (Sec. 611)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 4202)

(7) Agricultural trade with countries with large trade surpluses

The *House* bill would require the Secretary of Agriculture to develop plans for joint development assistance agreements with respect to countries that have substantial positive trade balances with the United States. The Secretary, in consultation with the Secretary of State and (through the Secretary of State) representatives of any such country, would be required to develop an appropriate plan (taking into consideration the agricultural economy of such country, the nature and extent of such country's programs to assist developing countries, and other relevant factors) under which that country would purchase United States agricultural commodities or products for use in development activities in developing countries. The Secretary would be required to submit each such plan to the President as soon as it is completed.

The *House* bill also authorizes the President to enter into an agreement with any country that has a positive trade balance with the United States under which that country would purchase United States agricultural commodities or products for use in agreed-on development activities in developing countries. (Sec. 319)

The *Senate* amendment provides that it is a primary negotiating objective of the United States to seek the elimination of barriers to agricultural trade by nations that have unusually large overall trade surpluses with the United States. It is the responsibility of those nations to reduce such barriers. (Sec. 2112)

The *Conference* substitute adopts the *House* provision. (Sec. 4203)

(8) Reorganization evaluation

The *House* bill will require the Secretary of Agriculture to evaluate the Department of Agriculture reorganization proposal recommended by the National Commission on Agricultural Trade and Export Policy and other proposals for improvement of current management of international and trade activities of the Department of Agriculture. To assist the Secretary in the evaluation, the Secretary would appoint a private sector advisory committee of not less than four members. The advisory committee would be appointed from among individuals representing farm and commodity organizations, market development cooperator organizations, and agribusiness.

The Secretary is to report the findings of the study to Congress, together with the views and recommendations of the private sector advisory committee, not later than April 30, 1988. (Sec. 602)

The *Senate* amendment is substantively the same but has some technical differences. (Sec. 2125)

The *Conference* substitute adopts the House provision with an amendment. The *Conference* substitute would provide for the study of the reorganization of the Foreign Agricultural Service to be completed and a report submitted to Congress not later than April 30, 1989. (Sec. 4202)

(9) Contracting Authority

The *House* bill would authorize the Secretary of Agriculture to contract with individuals outside the United States for personal services to be performed outside the United States. Such individuals would not be regarded as employees of the United States Government under any law, including any law administered by the Office of Personnel Management. (Sec. 608)

The *Senate* amendment authorizes the Secretary of Agriculture to contract with individuals for services to be performed outside the United States. The Secretary may use this authority to more effectively carry out programs and activities to maintain, develop or enhance export markets for United States agricultural commodities and products. These individuals would not be considered employees of the United States. (Sec. 2124)

The *Conference* substitute adopts the *Senate* provision. (Sec. 4205)

(10) An office to provide assistance to victims of unfair trade practices

The *House* bill contains a provision that provides for the establishment of an office within the Department of Agriculture, under the direction of the Under Secretary of Agriculture for International Affairs and Commodity Programs, to provide assistance to victims of unfair trade practices.

This office would be responsible for—

(1) providing to United States citizens and organizations damaged by unfair agricultural trade practices and policies such assistance as the Under Secretary determines appropriate in the development of cases before the United States Trade Representative, the International Trade Commission, the United States Department of Commerce, the Court of International Trade, and any other similar agency;

(2) providing and updating information to such persons regarding the incidence and severity of such practices and policies; and

(3) informing such persons of any adverse effect on them caused by such practices and policies of which such persons are not aware.

The office would also be required to provide information relating to such unfair trade practices to the appropriate Federal agencies, together with a recommendation by the Secretary of Agriculture with regard to the need for action, if any, to address such unfair trade practices. The office would coordinate its work with the activities of the Trade Remedy Assistance Office established under section 339 of the Tariff Act of 1930. (Sec. 606)

The *Senate* amendment requires the Secretary of Agriculture to assist United States citizens and organizations that have been damaged by unfair agricultural trade practices and policies. The Secretary is to assist such persons in preparing cases before the United States Trade Representative, the International Trade Commission, the United States Department of Commerce, the Court of International Trade, and any other similar agency. The Secretary is also required to—

(1) provide and update information to such persons regarding the incidence and severity of such practices and policies;

(2) inform such persons of any adverse effect on them caused by such practices and policies of which such persons are not aware;

(3) report information relating to such unfair trade practices and the effects of such practices to the appropriate Federal agencies, together with a recommendation with regard to what actions, if any, should be initiated under the laws of the United States with respect to trade; and

(4) annually notify Congress of any assistance that is provided under this section.

Subsection (b) provides that after the Secretary of Agriculture provides information and recommendations to the appropriate Federal agencies in accordance with subsection (a)(4), such agencies shall consult with the Secretary of Agriculture and inform the Secretary what actions, if any, such agencies will initiate in response to the information provided by the Secretary and the reasons for the chosen response.

Subsection (c) provides that the Secretary implement section 209 not later than 180 days after the date of enactment of this Act. (Sec. 2128)

The *Conference* substitute adopts the *House* provision with amendments. The *Conference* substitute provides that the Secretary of Agriculture shall establish an office within the Foreign Agricultural Service and under the direction of the Administrator of the Foreign Agricultural Service to carry out the duties described below.

The primary responsibility of the office would be to provide trade assistance and information to persons who are interested in exporting United States agricultural commodities and products or who believe they have been injured by unfair trade practices with respect to trade in agricultural commodities and products.

The office shall—

(1) compile and make readily available international trade information, including information concerning trade practices carried out by other countries to promote the export of agricultural commodities and products, trade barriers imposed by other countries, unfair trade practices of other countries, and remedies under United States law that might be available to persons injured by unfair trade practices; and

(2) provide information and assistance to persons interested in participating in programs carried out by the Foreign Agricultural Service, the Commodity Credit Corporation, and other agencies with respect to the marketing and export of domestically produced commodities, or who believe they have been injured by unfair trade practices of other countries with respect to trade in agricultural commodities and products.

No later than 60 days after the end of each fiscal year, the Administrator of the Foreign Agricultural Service shall submit a report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. The report shall describe—

(1) the type of information that is currently available through the office established by this section; and

(2) the type of assistance provided to persons during the previous fiscal year.

In the first report submitted under this section, the Administrator shall also—

(1) provide an analysis of the information currently available concerning foreign agricultural trade practices and domestic agricultural trade promotion programs and the methods used to disseminate such information;

(2) provide recommendations with respect to additional information and assistance that should be made available to interested persons; and

(3) provide an analysis of the degree that overlapping information and reports concerning agricultural trade are prepared. (sec. 4206)

The establishment of the Trade Assistance Office is not intended to burden agency infrastructure or create new levels of bureaucracy, nor it is the purpose of the new office to take over any of the current responsibilities of the Office of the United States Trade Representative or the International Trade Commission. The Conferees intended that there be one office in the Foreign Agricultural Service, either newly created or a combination of existing offices, which would be easily accessible for persons requesting domestic or international agricultural trade information or for those who may request guidance on what remedies are available under current law to assist victims of unfair trade practices. For example, a producer who may seek data on imports of a certain agricultural commodity may request the office to provide information on the trend of such imports over a certain period of time or the producer may request information on the appropriate federal agency to contact to discuss the adverse impact on the producer's industry of imports or foreign trade practices. In the latter instance, the Conferees intend that this office be able to provide an immediate response by referring the requestor to the appropriate official within the Office of the United States Trade Representative or any other appropriate Federal agency.

(11) Office to Monitor Trade Practices

The House bill provides for the establishment of an office within the Department of Agriculture, under the direction of the Under Secretary of Agriculture for International Affairs and Commodity Programs, to continuously monitor and study trade practices carried out by other countries to promote the export of agricultural commodities and products. The office is also responsible for preparing an analysis, every 6 months, by country and commodity or product, on quantitative import restrictions, trade barriers, and other policies and practices of foreign governments affecting exports of United States agricultural commodities and products and on any reductions in such trade practices. The information developed under this section is to be submitted to the Secretary of Agriculture every 6 months.

Within 15 days after receiving the report, the Secretary of Agriculture is to submit it to the following committees, along with information regarding the level of subsidies provided by other countries and the United States to promote the export of agricultural commodities and products:

(1) the Committee on Agriculture, Nutrition, and Forestry, the Committee on Foreign Relations, and the Committee on Finance of the Senate;

(2) the Committee on Agriculture, the Committee on Foreign Affairs, and the Committee on Ways and Means of the House of Representatives; and

(3) the United States Trade Representative. (Sec. 605)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision. The Trade Assistance Office will be responsible for compiling international trade information, including information concerning trade practices carried out by other countries.

(12) Export Sales of Government Stocks at Subsidized Prices

The House bill would amend section 1203 of the Agriculture and Food Act of 1981, which currently provides authority for a special standby export subsidy program.

The House bill would strike out subsection (d) of section 1203, redesignate subsection (c) as subsection (d), and insert a new subsection (c). The subsection to be deleted provides that the Secretary cannot implement the special standby export subsidy program for cotton.

The new subsection (c) to be added would establish a new export subsidy program under section 1203, as follows: The Secretary would be required to take all feasible steps to cause the exportation, at competitive world prices, of basic agricultural commodities (corn, cotton, peanuts, rice tobacco, and wheat) produced in the United States. To achieve such goal, the Secretary would be required, if necessary, to subsidize the price of exporting any basic agricultural commodity that the Secretary acquires under any price support loan program. The aggregate value of any subsidy could not exceed the sum of—

(1) the cost to the Government that would result from acquiring (under price support loan activities), but not selling, such commodity, including the costs of transportation, storage, and maintenance of quality incurred in connection with retaining such commodity; and

(2) the increase in tax revenues to the United States arising from the growth in the gross national product that would result from the export sales of such agricultural commodity, as estimated by the Secretary.

The House bill also provides that the new program would be carried out through the Commodity Credit Corporation. (Sec. 625)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision.

FOREIGN AGRICULTURAL SERVICE

(13) Foreign Agricultural Service personnel

The *House* bill requires that, to ensure that the agricultural export programs of the United States are carried out in an effective manner, the authorized number of personnel for the Foreign Agricultural Service be not less than 900 full-time employees during each of the 1987 through 1990 fiscal years.

The *House* bill provides that it is the sense of Congress that the personnel ceiling described above will permit the Foreign Agricultural Service to effectively carry out its current program and support activities, including programs established under the Agricultural Trade Development and Assistance Act (P.L. 480), section 416 of the Agricultural Act of 1949, and title XI of the Food Security Act of 1985; and provide resources for other activities of the Foreign Agricultural Service authorized in the bill. (Sec. 604)

The *House* bill also would provide that in order to make enhanced trade policy and international economic information more readily available, the Secretary of Agriculture is authorized to expand the number of agricultural counselors, attaches, assistant attaches and other diplomatic representatives of United States Department of Agriculture.

The *Senate* amendment provides that the authorized personnel level for the Foreign Agricultural Service (FAS) shall not be less than 850 full time employees for fiscal years 1987, 1988 and 1989, to help FAS more effectively carry out its responsibilities with respect to the various agricultural export programs of the United States.

The *Senate* amendment further provides that it is the sense of Congress that such increased personnel levels should allow FAS to devote greater resources to developing new markets for United States agricultural commodities and products. (Sec. 2123(a))

The *Conference* substitute adopts the *House* provision with an amendment deleting the sense of Congress language. (Sec. 4211)

The provisions of the Conference substitute that call for the increase in personnel of the Foreign Agricultural Service (FAS) to a level of at least 900 full-time staff, authorize $20 million above the normal appropriations level, and establish a Trade Assistance Office to aggregate trade information and provide assistance to United States agricultural interests on world trade matters and trade remedies indicate the Conferees' strong interest in better coordinated and more efficient operations of FAS.

The Conferees intend that the agency, in undertaking these changes accord first priority to an increase in personnel. The Conferees are cognizant of the many demands made on the agency by the Congress and the industry for trade data and other services of the Department of Agriculture and expect that the personnel level be increased as soon as possible to the 900 full-time staff mandated in this bill. Because of the new directives in the legislation towards more market development by the FAS, the Conferees encourage the agency to recruit personnel who have expertise and experience in such areas as international relations, finance and marketing.

In addition, the Conferees encourage FAS trade personnel and agricultural attachés to meet as often as possible with representatives of cooperator organizations, State agricultural officials and other interested agricultural groups to help orient those interested in exporting United States agricultural products in foreign import practices and market development and export promotion techniques.

The Conferees believe that this increased level of Foreign Agricultural Service employees will enable the agency to more effectively carry out its responsibilities under agricultural export programs.

(14) Attaché Educational Programs

The *Senate* amendment provides for the establishment of a program within the Foreign Agricultural Service whereby agricultural attachés returning from overseas assignments would visit and consult with agricultural producers and exporters throughout the country, to share their knowledge and expertise, in order to increase future exports of United States agricultural commodities and products.

The *Senate* amendment also would require the Administrator, Foreign Agricultural Service, to establish an educational program within the Foreign Agricultural Service which would give agricultural attachés and Service officers an opportunity to provide market development training and facilitate the exchange of information on market development and export promotion, with at least 30 private sector individuals, per session. These individuals would represent cooperator organizations, state agricultural offices, and various other interested parties (such as representatives of small agricultural businesses). This program is to be estab-

lished within 120 days after enactment of this Act. (Sec. 2123(b))

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* amendment with amendments. The *Conference* substitute provides for States to be included in the educational program established by this section. Under this program, agricultural attachés who are reassigned to the United States would visit and consult with producers and exporters of agricultural commodities throughout the United States. The Conferees do not intend that all returning agricultural attachés be required to participate in the program established by this section (Sec. 4212)

(15) Personnel Resource Time.

The *Senate* amendment provides that the Administrator of the Foreign Agricultural Service, in planning the overall allocation of personnel resource time of agricultural attachés, shall ensure that the maximum percentage practicable of the overall personnel resource time of agricultural attachés be devoted to activities designed to increase markets for United States agricultural commodities and products. The Administrator is required to submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that describes the allocation of personnel resource time of agricultural attachés during each of the fiscal years 1988 and 1989. The reports shall be submitted not later than September 30, 1988, and September 30, 1989, respectively. (Sec. 2123(c))

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 4213)

(16) Cooperator organizations.

The *House* bill would express the sense of Congress that the foreign market development cooperator program of the Foreign Agricultural Service, and the activities of individual foreign market cooperator organizations, have been among the most successful and cost-effective means to achieve the objective of expanded United States agricultural exports; and that Congress reaffirms its strong support of the program and of the cooperator organizations. The *House* bill further provides that the Administrator of the Foreign Agricultural Service and the private sector should work together to ensure that the program, and the activities of cooperator organizations, are expanded in the future.

The *House* bill would authorize the Secretary of Agriculture to make available to cooperator organizations, agricultural commodites owned by the Commodity Credit Corporation, for use by such cooperators in projects designed to expand markets for United States agricultural commodities and products. Commodities made available to cooperators under this provision would be in addition to, and not in lieu of, funds appropriated for market development activities of the cooperator organizations. (Sec. 609(a) and (b))

The *Senate* amendment authorizes the Secretary of Agriculture to make Commodity Credit Corporation (CCC) commodities available to cooperator organizations. If commodities are made available under this section, the cooperator organizations shall use such commodities to establish demonstration projects intended to expand markets for United States agricultural commodities. (Sec. 2122).

The *Conference* substitute adopts the *House* provision with amendments providing that such a program should be implemented in such a way as to avoid any conflicts of interest; and that the Foreign Agricultural Service should develop a means to evaluate the effectiveness of the cooperator programs. (Sec. 4214)

(17) Authorization of additional appropriations.

The *House* bill authorizes appropriations for the Foreign Agricultural Service of the Department of Agriculture (in addition to any sums otherwise authorized to be appropriated by any other provision of law) $22,500,000 for fiscal year 1987, $27,500,000 for fiscal year 1988, $32,500,000 for fiscal year 1989, and $32,500,000 for fiscal year 1990.

Of the funds authorized to be appropriated in each fiscal year—

(1) $4,500,000 would be for expansion of the agricultural attaché service;

(2) $1,000,000 would be for the expansion of international trade policy activities of the Foreign Agricultural Service;

(3) $2,000,000 would be for the enhancement of the Foreign Agricultural Service worldwide market information system; and

(4) $15,000,000 in fiscal year 1987, $20,000,000 in fiscal year 1988, $25,000,000 in fiscal year 1989, and $25,000,000 in fiscal year 1990 would be for expanded foreign market development. (Sec. 603)

The *Senate* amendment authorizes additional appropriations for the Foreign Agricultural Service equalling $15.2 million in 1987 and 1988, and $17.2 million in 1989 and 1990. This increased amount is allocated to the following uses in each fiscal year:

(1) $3.5 million for program management and support (including the expansion of the agricultural attache service);

(2) $4 million for creation of new markets and for providing adequate staff for developing markets for high value-added products;

(3) $2.7 million in the fiscal years 1987 and 1988 and $4.7 million in the fiscal years 1989 and 1990 for the conduct of trade shows and exhibitions; and

(4) $5 million for general foreign market development activities. (Sec. 2126)

The *Conference* substitute adopts the *House* provision with amendments. The *Conference* substitute would provide for a general overall increase in authorized appropriations for the Foreign Agricultural Service for each of the fiscal years 1988 through 1990 of $20,000,000 for marketing development activities, including—

(1) expansion of the agricultural attache service;

(2) expansion of international trade policy activities of the Foreign Agricultural Service;

(3) enhancement of the Foreign Agricultural Service worldwide market information system;

(4) increasing the number of trade shows and exhibitions conducted by the Foreign Agricultural Service and upgrading the quality of United States representations at trade shows and exhibitions so that the quality at least equals that of United States competitors;

(5) developing markets for value-added beef, pork, and poultry products. (Sec. 4215)

(18) Trade shows and exhibitions.

The *Senate* amendment requires the Administrator of the Foreign Agricultural Service to use the increased funds for trade shows provided for in the bill to increase the number of trade shows and exhibitions conducted by the Foreign Agricultural Service, improve the quality of the trade shows and exhibitions conducted by the Foreign Agricultural Service so that the quality is on a par with that of other countries' trade shows, provide more variety in the trade shows and exhibitions, and target the additional trade shows at newly developing markets. (Sec. 2127)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment. This provision, concerning the improvement in the quality and quantity of trade shows conducted by the Foreign Agricultural Service, is included in the section of appropriations. (Sec. 4215)

(19) Value-added Beef, Pork, and Poultry Products.

The *Senate* amendment provides that the Administrator of the Foreign Agricultural Service, in carrying out the programs of the Foreign Agricultural Service, shall place emphasis on the development of markets for value-added beef, pork, and poultry products. The Administrator shall promote the goal of assuring that the United States' share of the world export market for these meat products is at least as great as the United States' share of the world production market for these products. The Administrator of the Foreign Agricultural Service shall submit an annual report to Congress describing the progress that has been made in achieving this goal. (Sec. 2129)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment. This provision, calling for emphasis on the development of markets for value-added beef, pork, and poultry products, is included in the section on appropriations. (Sec. 4215)

(20) Private Sector Program.

The *Senate* amendment authorizes the Foreign Agricultural Service to employ, on a short term basis, private sector individuals who are experts in agricultural market development, and also permits Foreign Agricultural Service employees to work in the private sector to develop new market development expertise. The Administrator shall carry out this program in accordance with 18 U.S.C. 208 and all other provisions of law applicable to conflicts of interest.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes this provision.

(21) Stationing of marketing specialists in States.

The *House* bill provides that the Secretary of Agriculture shall assist state departments of agriculture in supporting the export efforts of private companies. Such assistance shall include the stationing of marketing specialists in States or regions as a part of the normal rotation of these specialists between Washington, D.C. and overseas locations.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision.

(22) Definitions.

The *Senate* amendment sets forth certain definitions for the purposes of Title II of the bill. (Sec. 2121)

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

SUBTITLE C—EXISTING AGRICULTURAL TRADE PROGRAMS

(23) Triggered Marketing Loan.

The *Senate* amendment would require the Secretary of Agriculture to implement a marketing loan program for producers of the 1990 crop of wheat, feed grains, and soybeans if, prior to the beginning of the 1990 marketing year for wheat, a bill has not been enacted in accordance with section 151 of the Trade Act of 1974 (19 U.S.C. 2191) that implements a trade agreement under the GATT concerning agricultural commodities. Under the marketing loan program required by this section, the Secretary of Agriculture shall permit producers to repay loans made under sections 107D(a), 105C(a), and 201(i)(1) of the Agricultural Act of 1949 for the 1990 crop of wheat, feed grains, and soybeans at a level that is the lesser of the loan level for such crop or the prevailing world market price established for the commodity that is pledged as collateral.

The President may waive the implementation of the mandatory marketing loan program if, during the 60-day period immediately prior to the beginning of the 1990 marketing year for wheat, the President certifies to Congress that (1) significant progress has been made toward reaching a trade agreement that implements the objectives set forth in section 102(c) of the bill, and (2) implementation of the marketing loan program would be harmful to achieving the trade agreement objectives. The President must consult with the Congressional representatives appointed under section 208 of this Act prior to making the certification and must accompany the certification with the opinions of such Congressional representatives concerning the progress of the negotiations and the effect that implementation of the marketing loan program would have on the negotiations.

The *Senate* provision would provide that the President's waiver shall not apply if a joint resolution disapproving the waiver is enacted.

The *Senate* provision would also modify the rules of the Senate and the House of Representatives for the express purpose of providing for expedited consideration of the joint resolution. Such joint resolution would be referred to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. Motions to consider or discharge the joint resolution may not be amended and shall be highly privileged. Debate on the joint resolution shall be limited to not more than 10 hours. Motions to postpone consideration of the joint resolution and appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the joint resolution shall be decided without debate. (Sec. 2131)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with amendments. The *Conference* substitute provides as follows:

If, prior to January 1, 1990, Congress has not enacted a bill implementing an agreement on agricultural trade under the GATT, the President shall, no later than 45 days after such date—

(1) submit a report to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate and the Committee on Agriculture, the Committee on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives describing the status of the negotiations, the progress that has been made to date, the general areas of disagreement, the anticipated date of completion of the negotiations, and the changes in the domestic farm programs that might be necessary upon conclusion of the negotiations; and

(2) certify to Congress whether or not significant progress toward reaching a GATT agreement on agriculture has been made.

The Conferees are aware of the sensitive nature of negotiations such as those being conducted in the Uruguay Round. The Conferees do not intend to require the President or the United States Trade Representatives to include classified or other information in this report that would jeopardize the successful conclusion of the negotiations.

If the President does not certify that significant progress has been made towards reaching a GATT agreement concerning agricultural trade, the President shall, not later than 60 days prior to the beginning of the marketing year for the 1990 crop of wheat instruct the Secretary of Agriculture to implement a marketing loan for the 1990 crops of wheat, feed grains, and soybeans, *Provided, that* the President, may waive application of this provision by certifying to Congress that implemention of the marketing loan would harm further negotiations.

If, subsequent to implementation of a marketing loan in accordance with the above paragraph, the President certifies to the Senate Committee on Agriculture, Nutiriton, and Forestry, the Senate Committee on Finance, the House Committee on Agriculture, the House Committee on Ways and Means, and the House Committee on Foreign Affairs that substantial progress is being made in the GATT negotiations and that continuation of the marketing loan program would harm such progress, the President may instruct the Secretary of Agriculture to discontinue the marketing loan program.

If the President exercises the waivers provided for with respect to implementation of the marketing loan, then the Secretary shall make commodities acquired by the Commodity Credit Corporation equalling at least $2 billion in value available during the 1990 through 1992 fiscal years to United States exporters of domestically produced commodities for the purpose of making exports of such commodities available on the world market at competitive prices.

Commodities made available in accordance with this provision shall be in addition to, and not in lieu of, other commodities already made available for the purpose of enhancing the export of United States commodities. The Secretary of Agriculture may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this subsection. Therefore, up to $4.5 billion could be available to conduct an agricultural export enhancement program to counter unfair trading practices.

The President may waive the implementation of the expanded export enhancement program by certifying to Congress that implementation of the export enhancement program provided for by this subsection would be a substantial impediment to achieving a successful agreement under the GATT. If, subsequent to the implementation of the expanded export enhancement program, the President certifies to Congress that substantial progress is being made in the GATT negotiations and that continuation of the export enhancement program would harm such progress, the President may instruct the Secretary of Agriculture to suspend the implementation of such program.

Before the President makes any of the certifications provided for in this provision, the United States Trade Representative must consult with the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate and the Committee on Agriculture, the Committee on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives and report to the President. (Sec. 4301)

In adopting this provision, the Conferees intend that, if triggered, expanded funding for export enhancement program initiatives be applied as equitably as possible, depending on international trade circumstances, to all agricultural commodities to force further progress on an agricultural agreement in the Uruguay Round of multilateral trade negotiations.

The Export Enhancement Program (EEP) has effectively encouraged several governments to pursue the present Uruguay Round of negotiations. However, discriminatory trading practices continue to jeopardize the ability of United States exporters to compete in many markets for all agricultural commodities, and certain value-added products derived from those commodities and distort agricultural trade generally. One of the EEP's fundamental strengths as a negotiating tool is its ability to be applied selectively in specific markets against specific trading policies and selected practioners.

In selecting this option as a further negotiating tool, the Conferees were equally concerned that the Executive branch not misinterpret * * * provision by commodity. In using the additional leverage mandated under this legislation, the Executive branch should refrain from an unwarranted, narrow interpretation and implement this legislation as a sustained, broad-based response to all unfair trading practices affecting the full range of United States commodity exports in all adversely affected markets.

(24) Price Support for Sunflower Seeds and Cottonseed.

The *Senate* amendment amends section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) with respect to price support programs for the 1990 crops of sunflower seeds and cottonseeds.

The *Senate* amendment provides that if a marketing loan program is implemented under section 2131 of the bill with respect to the 1990 crop of soybeans, the Secretary of Agriculture shall implement a price support program for the 1990 crop of sunflowers.

The *Senate* provision also would amend section 201(i) of the Agricultural Act of 1949 to add a new paragraph (7) that provides that if a marketing loan program is instituted for the 1990 crop of soybeans under section 2131 of the bill, the Secretary of Agriculture shall support the price of cotton seeds at such level and in such manner as the Secretary determines will cause cottonseeds to compete on equal terms with soybeans in the market. (Sec. 2172)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* amendment with an amendment requiring the Secretary of Agriculture to discontinue any price support program implemented under this provision if the President has instructed the Secretary to discontinue implementation of the marketing loan pro-

gram for soybeans because such program will harm further GATT negotiations and other technical amendments. (Sec. 4302)

(25 Multi-year agreements under the Food and Progress program.

The *House* bill provides that, subject to the availability of commodities, the President is encouraged to approve multiyear agreements to make commodities available for distribution or sale by the recipients if the agreements otherwise meet the requirements of section 1110 of the Food Security Act of 1985. (Sec. 619)

The *Senate* amendment is substantively the same, except the President is required, on request, to approve multiyear agreements. (Sec. 2132)

The *Conference* substitute adopts the *Senate* provision with an amendment. The *Conference* substitute would amend section 1110 of the Food Security Act of 1985 to provide that in carrying out section 1110, subject to the availability of commodities, the President must approve multiyear agreements to make commodities available for distribution or sale by the recipients if the agreements otherwise meet the requirements of section 1110. (Sec. 4303)

(26) Targeted Export Assistance program.

The *House* bill amends section 1124(b) of the Food Security Act of 1985 to add a new paragraph that provides for a second purpose for which the Targeted Export Assistance (TEA) program commodities or funds are to be used, as follows: Use by the Secretary of Agriculture to assist organizations consisting of producers or processors of United States agricultural commodities, in such amounts as are determined to represent reasonable expenses incurred by them, in defending countervailing duty actions instituted after January 1, 1986, in foreign countries to offset the benefits of the agricultural programs provided for under the Agricultural Act of 1949 or the Food Security Act of 1985. In no event could such assistance exceed $500,000 for the defense of any one countervailing duty action. (Sec. 609(c))

The *Senate* amendment amends subsection (a) of section 1124 of the Food Security Act of 1985 by increasing the amount of funds of, or value of commodities owned by, the Commodity Credit Corporation that shall be used for export activities authorized to be carried out by the Commodity Credit Corporation or the Secretary of Agriculture, to not less than $215 million for fiscal year 1988, and not less than $325 million for fiscal years 1989 and 1990. For fiscal year 1988, the Secretary is required to use the funds of, or commodities owned by, the Commodity Credit Corporation in excess of $110 million only to the extent that appropriations are made available in advance.

The *Senate* amendment also amends subsection (b) of section 1124 of the Food Security Act of 1985 to provide that funds of, or commodities owned by, the Commodity Credit Corporation that are made available under section 1124 may be used by the Secretary of Agriculture to compensate trade organizations representing producers or processors of United States agricultural commodities for reasonable expenses, as determined by the Secretary, incurred by such organizations in helping defend against countervailing duty actions instituted in foreign countries to offset benefits that may be provided to United States producers and processors under the price support programs authorized under the Agricultural Act of 1949.

This authority only applies to countervailing duty actions that have been instituted after January 1, 1986. Compensation provided for by the Secretary under this section may not exceed $500,000 for the defense of any one countervailing duty action. If the Secretary determines not to make funds or commodities available to a trade association after receiving a request for compensation, the Secretary shall inform the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the reasons for the determination. (Sec. 2133)

The *Conference* substitute adopts the *Senate* provision. (Sec. 4304)

The Conferees encourage the Secretary of Agriculture to provide export assistance under section 1124(c) of the Food Security Act of 1985 on a priority basis for the export of domestically grown commodities that have to compete against commodities that are subsidized or dumped in third country markets. An unusually high countervailing or dumping duty imposed on imports of a product into the United States can be a strong indication that subsidizing or dumping is occurring in a third country market. For example, very high countervailing and anti-dumping duties have been levied on imports of pistachios from Iran. If Iran is similarly subsidizing its exports to third country markets, the United States industry faces very difficult hurdles in competing in those markets.

In addition, the Conferees are aware that during the course of bilateral trade disputes other nations may take steps to retaliate against agricultural commodities produced by United States agricultural producers. The Secretary of Agriculture has many available authorities, most notably those available under section 1124, that can be used to aid United States producers who face the harsh economic consequences of retaliatory trade practices. The Secretary of Agriculture should use the Targeted Export Assistance program immediately when a retaliatory trade action adversely affects United States producers of a commodity, particularly those producers that have been injured by such retaliatory action more than once. Use of the Targeted Export Assistance program could help offset the adverse effect of the retaliation.

The Committee believes that when the Secretary considers whether to provide such assistance, the Secretary should consider whether the retaliatory trade action includes the establishment of any tariff or non-tariff trade barriers, or any other trade action which has the effect, if implemented, of influencing market price stability through the reduction of sales, loss of markets, reduction of market prices, or reduction of export sales of the agricultural commodities and products.

(27) Export Credit Guarantee Program.

The *Senate* amendment provides that it is the sense of Congress that Commodity Credit Corporation make short-term credit guarantees available to countries without placing a ceiling on the amount of such credit guaranteees that may be used for exports of a particular commodity to a specific country. The full allocation of credit guarantees for a specific country should be available for use for exports of all eligible commodities to such country. (Sec. 2134)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 4305)

(28) Agricultural Export Enhancement Program.

The *House* bill would amend section 1127 of the Food Security Act of 1985, which established the Export Enhancement Program ("EEP"), as follows:

(1) A new paragraph (3) would be added to subsection (b), and existing paragraphs (3), (4), and (5) would be redesignated as paragraphs (4), (5), and (6), respectively. Paragraph (2) now requires the Secretary, in providing assistance to foreign purchasers of United States-produced agricultural commodities and products under section 1127, to give priority to foreign purchasers who have traditionally purchased United States agricultural commodities and products and are intending to purchase commodities and products in amounts greater than their historical purchase levels.

The new paragraph (3) would provide the Secretary with discretion to give priority to foreign purchasers of United States-produced agricultural commodities and products who have traditionally purchased such United States commodities and products and intend to continue purchasing these commodities and products in amounts at least equal to their historical purchase levels.

(2) A new paragraph would be added to subsection (b) of section 1127 to prohibit the Secretary from including as expenditures or as budget outlays (for purposes of the Congressional Budget and Impoundment Control Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985 (commonly kown as the Gramm-Rudman-Hollings Act)) the commodity market effect of the agricultural commodities and products, or the Commodity Credit Corporation generic payment certificates, that are used for programs authorized under section 1127 if the commodities and products, or value of the commodities and products represented by certificates are used to meet the purposes set forth in subsection (a)(3)(A) of section 1127. The exclusion would apply, commencing with fiscal year 1988, if the commodities are used to counter or offset (a) the adverse effects of United States agricultural exports of unfair trade practices by other countries, (b) the adverse effects of United States agricultural price support levels that are temporarily above export prices offered by our competitors in world markets, or (c) fluctuations in the exchange rate of the dollar. The prohibition likewise would apply to the Director of the Office of Management and Budget and the Director of the Congressional Budget Office.

The *House* bill would further amend section 1127 of the Food Security Act of 1985 to extend the mandatory nature of the EEP program two years, through 1990. The bill also increases to $2.5 billion the upper limit on the value of commodities and products used in EEP.

The *House* bill would also add a new subsection (j) to section 1127 which would provide that, for purposes of meeting the minimum levels of expenditures required by the statute, the value of commodities or products distributed under the program would be determined by using the market value of the commodities or products at the time of distribution. (Sec. 622)

The *Senate* amendment would amend section 1127 of the Food Security Act of 1985, which established the Export Enhancement Program (EEP), as follows:

(a) With respect to exports of wheat and feed grains, to the extent that the Secretary is required to make EEP available under subsection (a)(3) of section 1127 (for example, to counter or offset a subsidy or unfair trade practice of a foreign country), the Secretary must make EEP bonus commodities available to all interested United States exporters, users, processors, or foreign purchasers in sufficient quantities to make such commodities competitive and increase the use of much commodities. The Secretary shall give priority to sales to countries that have traditionally imported or purchased the commodities and products and sales to countries that continue or begin to import or purchase such commodities in quantities equal to or greater than the level of imports or purchases in a previous representative period.

(b) Subsection (b)(3) of section 1127 modifies the requirement that the Secretary implement the EEP in such a way as to "avoid market displacement of United States sales. Under the amendment, the Secretary must operate the program in such a way as to "minimize" such market displacement.

(c) Subsection (i) of section 1127 is amended to extend the EEP through the 1990 fiscal year and to increase the level of funding for EEP during the 1989 and 1990 fiscal years. The Secretary is required to use agricultural commodities and products to carry out EEP the equal in value to not less than $500,000,000 during the two year period ending September 30, 1990. Further, the ceiling on total expenditures that the Secretary is authorized to expend under the EEP is raised from $1.5 billion dollars to $2.5 billion dollars over the entire five year period, 1985 through 1990.

(d) Subsection (i) of section 1127 is further amended to provide that the value of commodities used in the program shall be determined on the basis of their market value when they are made available.

(e) A new subsection (j) is added at the end of section 1127. This subsection provides that the producers of any agricultural commodity referred to in subsection (a)(2) of section 1127 may petition the Secretary to request treatment for their commodity similar to that provided for wheat and feed grains. It further states that within 30 days after receipt of such petition, the Secretary shall determine whether to provide such treatment and will publish the determination in the Federal Register. The determination shall be based on the preference of the domestic industry that produces the specific commodity and the trade interests of the United States. (Sec. 2135)

The *Conference* substitute adopts the *House* provision with amendments. The *Conference* substitute provides that in carrying out the export enhancement program, the Secretary may consider for participation all interested United States exporters, processors, users, and foreign purchasers, and may give priority to sales to countries that have traditionally purchased United States agricultural commodities and the products thereof.

The *Conference* substitute also provides that during the period beginning October 1, 1985, and ending September 30, 1990, the value of agricultural commodities and the products thereof that may be used by the Secretary under section 1127 may not exceed $2,500,000,000. (Sec. 4306)

The Conferees support the continued use of export enhancement type programs when their use does not interrupt commercial sales. The Conferees do not intend, however, that the displacement rule under section 1127(b)(3) of the Food Security Act of 1985 be so broadly construed as to become an absolute bar to the use of export enhancement type programs when the Secretary determines that possible displacement is minimal. It is expected that the Secretary will evaluate the overall benefits of the export enhancement program in helping to increase export sales of United States agricultural commodities in determining whether a minimal possibility of displacement should stop the application of the program.

The Conferees also support the use of export enhancement initiatives for value-added products of basic commodities, in particular for such products as wheat flour for which United States exporters, through the GATT, have sought redress from unfair export subsidies by their competitors. In order to achieve relief from such practices and to enhance United States efforts to achieve a comprehensive GATT agreement on all facets of agricultural trade during the Uruguay Round of multilateral trade negotiations, the Conferees believe that the Secretary should actively use the EEP to counter predatory trade policies. Such action will ensure that the United States maintains a strong response to the unfair trade practices of our competitors. The use of the EEP for wheat flour has been effective in countering unfair trading practices for value-added products. The Conferees support its continuation.

(29) Agricultural Attaché Reports.

The *Senate* amendment amends section 1132(b) of the Food Security Act of 1985 to require the Secretary of Agriculture to take certain actions with respect to the reports prepared by agricultural attachés in accordance with section 1132 as follows:

(1) rank each barrier to trade by commodity group according to the potential percentage increase of dollar sales for each group;

(2) include in the compilation a list of actions undertaken or actions planned to be undertaken to reduce or eliminate such trade barriers; and

(3) make the compilation available to Congress, the agricultural policy advisory committees, and, if nonconfidential, other interested parties. (Sec. 2136)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with amendments. The *Conference* substitute provides for the Secretary of Agriculture to take certain actions with respect to the reports prepared by agricultural attaches, including the ranking of trade barriers. The *Conference* substitute further provides that to the extent practicable, the reports called for in this section should be used by the Trade Assistance Office—the new office to be established within the Foreign Agricultural Service. (Sec. 4307)

(30) Dairy Export Incentive Program.

The *Senate* amendment provides that if payments in commodities are authorized under the dairy export incentive program, such payments shall be made in generic commodity certificates redeemable in commodities. If such generic commodity certificates are exchanged for dairy products, the Secretary of Agriculture must ensure that such dairy products are sold for export and that such sales do not displace usual United States export sales of dairy products. (Sec. 2139B)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 4308)

(31) Barter provisions.

The *House* bill expresses the sense of Congress that the Secretary of Agriculture should expedite the implementation of the following sections of the Food Security Act of 1985 relating to the barter of agricultural commodities:

(1) Section 1129, which added subsection (d) to section 416 of the Agricultural Act of 1949. Subsection (d) requires the Secretary to carry out a pilot program under which foreign strategic materials would be bartered for agricultural commodities made available under section 416.

(2) Section 1167, which amended section 4(h) of the Commodity Credit Corporation Charter Act (to require certain Commodity Credit Corporation barter activity, including barter to acquire petroleum for the Strategic Petroleum Reserve) and contains several other provisions relating to barters.

The *House* bill also states that Congress recognizes the importance of barter programs in expanding agricultural trade, and emphasizes this importance to the Secretary.

The *Senate* amendment provides that is the sense of Congress that the Secretary of Agriculture should implement the pilot barter program established under section 1129 of the Food Security Act of 1985 no later than September 30, 1987. (Sec. 2156)

The *Conference* substitute adopts the *House* provision. (Sec. 4309)

(32) Minimum Level of Food Assistance.

The *House* bill provides that it is the sense of Congress that the United States should maintain its historic level of food assistance constituting ⅓ of all United States foreign economic assistance. Not less than ⅓ of the funds available in each fiscal year for foreign assistance should be used to make food assistance available to foreign countries under the Agricultural Trade and Development Assistance Act of 1954 and sec. 416(b) of the Agricultural Act of 1949. (Sec. 664)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provisions. (Sec. 4310)

(33) Food Aid and Market Development.

The *House* bill would provide that it is the policy of the United States to use food aid and agriculturally-related foreign economic assistance programs more effectively to develop markets for United States agricultural commodities and products. The President (or, as appropriate, the Secretary of Agriculture) shall encourage the recipient country under food assistance agreements entered into under any program administered by the Secretary to agree to give preference to United States food and food products in its future food purchases. (Sec. 320)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 4311)

(34) Eligibility of Certain Agricultural Commodities for Export Credit Guarantee Programs

The *Senate* amendment provides that export sales of agricultural commodities produced in the United States shall be eligible for short or intermediate term export credit guarantees made available by the Commodity Credit Corporation if at least 75 percent of the cost of the agricultural commodities used to produce the commodity being exported is derived from agricultural

commodities produced in the United States. However, any export credit payment guarantee made available with respect to the export of an agricultural commodity is not composed of 100 percent United States product may not cover any portion of the exported commodity that was derived from agricultural commodities produced outside the United States. (sec. 2138)

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(35) Export Assistance Programs.

The *House* bill would express the sense of Congress that the Secretary of Agriculture should—

(1) allow more foreign countries to become eligible for the agricultural export enhancement program (EEP) established under section 1127 of the Food Security Act of 1985;

(2) establish a system to reward foreign governments that eliminate trade barriers; and

(3) fully fund—

(a) the EEP;

(b) the export credit guarantee program (GSM.102) under which the Commodity Credit Corporation guarantees the repayment of credit extended on terms of up to 3 years in connection with the export sale of United States agricultural commodities and products;

(c) the program authorized by section 4(b) of the Food for Peace Act of 1966, known as the Intermediate Export Credit Sales Program (GSM-103), under which the Commodity Credit Corporation finances export sales of United States agricultural commodities and products on credit terms of more than 3 years but not more than 10 years; and

(d) the targeted export assistance (TEA) program established under section 1124 of the Food Security Act of 1985.

The *House* bill also expresses the sense of Congress that the President should approve the sale of wheat to the Soviet Union under the EEP. (Sec. 621)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision. By deleting this provision, it is not the intent of the Conferees to express disapproval of the sentiments set forth in the *House* bill. Since the original passage of the *House* bill, the Secretary of Agriculture has demonstrated a willingness to continue to fund an export enhancement type program even after the level of funding required in section 1127 of the Food Security Act of 1985 had been expended. The Conferees note the Department's approval of several sales of wheat recently made to the Soviet Union using the export enhancement program. It appears to the Conferees that the President and the Secretary of Agriculture have recognized the central importance of these export assistance programs to the overall competitiveness of United States agricultural exports.

(36) Uniform Treatment of Commodities Under Agricultural Export Programs.

The *Senate* amendment amends section 106A(d)(1)(B) and 106B(d)(2)(A) of the Agricultural Act of 1949 to provide that any loss that is sustained by the association that provides price support to tabacco producers as the result of the export, pursuant to an export promotion program carried out by the Secretary of Agriculture or the Commodity Credit Corporation, of tobacco that has been pledged as collateral for such loans shall not be taken into account in determining assessments and contributions, as the case may be, to be leveled against tobacco producers. (Sec. 2139)

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

SUBTITLE D—WOOD AND WOOD PRODUCTS

(37) Wood and Wood Products

The *House* bill directs the Secretary of Agriculture to actively use Department of Agriculture commercial and concessional export credit programs to promote the export of wood and processed wood products.

The *House* bill also amends section 105(b)(1) of the Agricultural Trade Development and Assistance Act of 1954 to make wood and processed wood products of the United States eligible for certain P.L. 480 market development activities and section 108 of the same Act ot make certain housing activities eligible for funding under section 108 of that Act.

The *House* bill amends section 1125 of the Food Security Act of 1985 by designating wood and wood products as agricultural commodities, and therefore eligible for short and intermediate term export credit guarantee programs.

The *House* bill requires the Secretary of Agriculture to establish a cooperative national forest products marketing program to improve the competitiveness of the United States forest products industry. The program is to provide technical assistance to the States and to the industry to improve marketing activities and increase competitive opportunities. It is also to provide financial grants to the States, with matching requirements to assist in regional forest products marketing efforts. Special attention is to be given to small and medium sized forest products firms since these firms in particular, lack the tools to meet the challenge of increasing domestic and foreign competition.

The *House* bill authorizes $5 million to be appreciated for each of fiscal years 1988 through 1991. The bill also requires the Secretary of Agriculture to report annually to Congress on the activities under the marketing program. (Sec. 318(c) and 651)

The *Senate* amendment is substantively the same, but has some technical differences. The *Senate* amendment would amend the Cooperative Forestry Assistance Act of 1978 to establish the cooperative national forest products marketing program. (Sec. 2182)

The *Conferees* substitute adopts the *Senate* provisions with technical amendments (Sec. 3309, 4401-04)

SUBTITLE E—STUDIES AND REPORTS

(38) Canadian Wheat Import Licensing.

The *House* bill contains findings of Congress with respect to Canadian wheat import licensing requirements. These include findings that——

(1) Canadian importers of wheat or products containing a minimum of 25 percent wheat from the United States must obtain import licenses from the Canadian Wheat Board;

(2) the Canadian Wheat Board requires such importers of United States wheat to prove that the wheat to be imported is not readily available in Canada before issuance of an import license;

(3) for all practicable purposes such licenses are not granted;

(4) the licensing requirement results in a non-tariff trade barrier on the importation of United States wheat and wheat products; and

(5) Canada is a member of the General Agreement on Tariffs and Trade and under such agreement, member countries should eliminate import licensing programs that operate as non-tariff trade barriers.

The *House* bill also provides that the Secretary of Agriculture shall conduct a study of this import licensing program to determine—

(1) the nature and extent of the licensing requirements of the program; and

(2) the estimated effect of the program in reducing exports of United States wheat and wheat products to Canada;

The Secretary would be required to report the results of its study to the United States Trade Representative within 90 days after the date of enactment of the bill. No later than 90 days after the results of the study are submitted to the United States Trade Representative, the Secretary of Agriculture and the United States Trade Representative shall consult with the agriculture Committees and the House Committee on Ways and Means and the Senate Committee on Finance on the status of efforts by the United States to negotiate the elimination of such Canadian licensing requirements. (Sec. 613)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 4501)

(39) Import Inventory.

The *House* bill will require the Secretary of Agriculture, in consultation with the Secretary of Commerce, the International Trade Commission, the United States Trade Representative, and any other appropriate Federal agency, to compile and report to the public statistics on the total value and quantity of imported raw and processed agricultural products. The Secretary is to compile and report to the public data on the total amount of production and consumption of domestically produced raw and processed agricultural products.

The reports are to be made in a format that correlates statistics for the quantity and value of imported agricultural products to the production and consumption of domestic agricultural products, and issued on a quarterly basis. (Sec. 672)

The *Senate* amendment requires the Secretary of Agriculture, in consultation with various agencies that compile and report data and statistics on agricultural imports, to issue quarterly reports containing: (a) the total value and quantity of imported raw and processed agricultural products; and (b) the total quantity of production and consumption of domestically produced raw and processed agricultural products. These statistics are to be in a format to enable correlation between the total quantity and value of imported agricultural products and the production and consumption of domestic agricultural products. (Sec. 2174)

The *Conference* substitute adopts the *House* provision with amendments that provide that (1) the commodities to be covered by this study are those with respect to which the United States Department of Agriculture currently compiles statistics and (2) the Secretary is to submit this report on an annual basis. (Sec. 4502)

The Conferees intend that this report be prepared in such a way so that the International Trade Commission does not make

public any business proprietary information.

(40) Honey Study.

The *House* bill would require the Secretary of Agriculture to conduct a study to determine the effect of imported honey on United States honey producers, the availability of honey bee pollination within the United States, and whether imports of honey tend to interfere with or render ineffective the honey price support program of the Department of Agriculture.

Not later than 60 days after the date of enactment of the bill, the Secretary would have to report the results of the study to the Committee on Agriculture and the Committee on Ways and Means of the House and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate. (Sec. 673)

The *Senate* amendment requires the Secretary of Agriculture to conduct a study and report to Congress on the effect of imported honey on domestic honey producers, on the adequacy of the honey bee population in the United States for pollination purposes, and on the domestic honey price support program. The report is due within 60 days of enactment of this Act. (Sec. 2193)

The *Conference* substitute adopts the *House* provision with amendments that change the time within which the study must be completed from 60 days to 90 days after the date of enactment of the Act and other technical amendments. (Sec. 4503)

(41) Dairy Import Quota Study.

The *House* bill will require the Secretary of Agriculture to conduct a study to determine how and to what extent the reduction or elimination of quotas on the importation of certain dairy products imposed under section 22 of the Agricultural Adjustment Act of 1933, as a result of negotiations on the General Agreement on Tariffs and Trade or a similar negotiation or agreement, might adversely affect the administration of the Federal dairy price support program and cause injury to the United States dairy industry. (Sec. 675)

The *Senate* amendment requires that a study be conducted within 180 days of enactment of this Act, to determine whether the price support program for milk would be adversely affected by any reduction in, or elimination of, limitations that have been imposed on the importation of certain dairy products under section 22 of the Agricultural Adjustment Act, as a result of upcoming multilateral trade negotiations, including those being conducted under the General Agreement on Tariffs and Trade.

The Secretary is to submit a report on the results of the study, alone with recommendations, to the Committee on Agriculture of the House of Representatives and the Committees on Agriculture, Nutrition and Forestry of the Senate. (Sec. 2191)

The *Conference* substitute adopts the *Senate* provision with amendments. The *Conference* substitute provides for the Secretary of Agriculture to study how the milk price support program would be affected if dairy import quotas were reduced or eliminated as a result of the GATT negotiations. The Secretary will assess the likelihood that any such reduction or elimination of quotas would occur on a multilateral basis. (Sec. 4504)

The Conferees do not intend that the report prepared by the Secretary be required to contain sensitive negotiating information.

(42) Report on Intermediate Export Credit.

The *House* bill provides that not later than December 31, 1987, the Secretary of Agriculture shall submit a report to the Senate and House Agriculture Committees and the House Foreign Affairs Committee with request to the authorities established under the Food for Peace Act of 1966, the Agricultural Trade Development and Assistance Act of 1954, section 416 of the Agricultural Act of 1949, and the Commodity Credit Corporation Charter Act. The report shall focus on the use of such authorities to provide intermediate credit financing and other trade assistance for the establishment of facilities in importing countries to improve storage and marketing of imported agricultural products, to increase livestock production, and to increase markets for United States livestock and livestock products. (Sec. 612(a))

The *Senate* amendment requires that not later than December 31, 1987, the Secretary of Agriculture report to the Senate and House Agriculture Committees on the use of the intermediate credit program authorized under Section 4(b) of the Food for Peace Act of 1966 to improve storage and marketing of imported agricultural products, to increase livestock production, and to increase markets for United States livestock. This reflects the Committee's concern that this credit not be used solely for sales of agricultural products but also for facilities that will permit countries to import increased amounts of United States agricultural and products in the future. (Sec. 2192)

The *Conference* substitute adopts the *House* provision with an amendment that provides that this report must be submitted within 180 days after the date of enactment of the Act. (Sec. 4505)

(43) Imported Meat & Poultry Products.

The *House* bill would require that, within 90 days after enactment of Act, the Secretary of Agriculture must submit a report to Congress that—

(1) specifies planned distribution in the fiscal years 1987 and 1988 of the resources of the Department of Agriculture for sampling imports of meat, poultry, and egg products to ensure compliance with the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act governing permitted levels of pesticide, drugs, and other residues in such products;

(2) describes current methods used by the Department to enforce the requirements of such Acts respecting the level of residues of pesticides, drugs, and other products permitted in or on such products;

(3) responds to an Office of Inspector General audit report No. 38002-2-hy;

(4) specifies the number of samples of meat and poultry imports taken during 1986 and 1987 in carrying out such Acts and contains details about violations and the actions taken in response to the violations;

(5) describes any research conducted by the Secretary to develop improved methods to detect residues subject to such requirements in or on meat and poultry products; and

(6) contains any recommendations the Secretary considers appropriate for legislation to add or modify penalties for violations of laws, regulations, and other enforcement requirements governing the level of residues that are permitted in or on imported meat and poultry products. (Sec. 676)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 4506)

(44) Study of Circumvention of Agricultural Quotas.

The *Senate* amendment provides for a study and a report to be conducted by the Secretary of Agriculture for the purpose of determining whether products containing sugar or dairy products are being imported into the United States in such a manner or in such quantities so as to circumvent or avoid the quotas imposed on imports of sugar, sugar containing products, or dairy products under section 22 of the Agricultural Adjustment Act or under the Tariff Schedules of the United States.

The section also provides that in conducting this study, the Secretary shall evaluate—

(1) the efforts undertaken by the United States Customs Service in the enforcement of the quotas;

(2) the change in the composition and volume of imports containing sugar or dairy products subsequent to the imposition of the quantitative limitations;

(3) the effectiveness of section 22 in preventing the circumvention or avoidance of the quantitative limitations;

(4) the effect of imports containing sugar or dairy products on the price support programs for these commodities; and

(5) evaluate the use of United States foreign trade zones to circumvent the quotas.

The report is to be completed no later than 120 days after the date of enactment of this Act. (Sec. 2194)

The House bill has no comparable provision.

The *Conference* substitute adopts the *Senate* provision with amendments. The *Conference* substitute provides as follows:

The Comptroller General shall conduct a study with respect to—

(1) whether products containing dairy products (including chocolate in blocks of at least 10 pounds and other such products) are being imported into the United States in such a manner or in such quantities as to circumvent or avoid the limitations imposed on imports of dairy products under section 22 of the Agricultural Adjustment Act; and

(2) whether products containing refined sugar are being imported into the United States in such a manner or in such quantities as to circumvent or avoid the limitations imposed on imported or refined sugar and sugar containing products imported under the Tariff Schedules of the United States.

In conducting this study, the Comptroller General must investigate—

(1) the efforts undertaken by the United States Customs Service in the enforcement of the existing quantitative limitations described above;

(2) the change in the composition, volume, and pattern of imports containing sugar and imports containing dairy products subsequent to the initial imposition of the quantitative limitations;

(3) the effectiveness of section 22 of the Agricultural Adjustment Act in preventing the circumvention or avoidance of the quantitative limitations; and

(4) the use of United States foreign trade zones to circumvent the quantitative limitations.

Upon completion of the study, the Comptroller General must, within 180 days after the date of enactment of this Act, report the results to the Committee on Agriculture, Nutrition, and Forestry and the Com-

mittee on Finance of the Senate and the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives (Sec. 4507)

The Conferees do not intend for the Comptroller General to duplicate any ongoing studies concerning circumvention of these quotas by imports of sugar, sugar containing products, or dairy products. The Conferees do intend, however, that to the extent practicable, the Comptroller General incorporate the concerns set forth in this section in any such study.

(45) Study Pertaining to Lamb Meat Imports.

The *House* bill would require the Secretary of Agriculture to conduct a study of trends with respect to the level of imports of lamb meat and the effect of such imports on domestic production of lamb meat. The Secretary shall submit the results of this study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than June 1, 1988, or 180 days after the date of enactment of the bill. (Sec. 682)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with amendments. The *Conference* substitute provides as follows:

The Secretary of Agriculture is required to conduct a study of the market for lamb meat products in the United States, focusing on production, demand, rate of return on investment, marketing and trends with respect to the level of imports of live lamb and lamb meat products and the effects of the imports on the production of lamb meat in the United States.

The Secretary of Agriculture shall, within 180 days after the date of enactment of the bill, submit to the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report setting forth the results of the study. If appropriate, the report should include proposals on ways to bring about a long-term increase in per capita consumption of lamb meat products and ways to encourage a more profitable and productive domestic industry to ensure a plentiful and affordable supply of lamb meat. (Sec. 4508)

The Conferees recognize the great impact that seasonal and other surges of lamb imports have on the prices, production, and employment in the United States lamb industry. Small variations in the quantity or price of lamb imports, if examined only on an annual basis, may mask the significant impact on the domestic industry that occurs whenever imports surge, such as during periods of holiday purchasing. Moreover, domestic lamb producers are particularly affected by these circumstances because of the geographic concentration of United States lamb producers, the decentralized nature of the domestic industry, which is composed of many small producers, and the seasonal patterns of demand that exist in the United States. Any analysis of the impact of imports of either live lambs or lamb meat should examine these factors.

(46) Rose Study, Report and Findings

The *House* bill would require the Secretary of Agriculture, in conjunction with the United States Trade Representative and not later than 120 days after the date of enactment of the bill, to complete a study to determine the—

(1) effects of rose imports into the United States on domestic rose-growing industry;

(2) extent, nature, and estimated value of any foreign subsidies provided to such imports;

(3) extent and estimated level of any possible dumping of roses into the United States; and

(4) effects that the European Community's tariff rate for imported roses has on world trade of roses.

The Secretary would be required to report the results of the study, as soon as the study is complete, to the Committee on Agriculture and the Committee on Ways and Means of the House and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

If the Secretary determines that the domestic rose industry is being adversely affected by unfair trade practices of foreign competitors, the Secretary would be urged to use all available remedies, programs, and policies available to the Department of Agriculture to assist the domestic rose industry to maintain and enhance its ability to compete in the domestic and world market for roses. (Sec. 674)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with amendments. The *Conference* substitute provides that pursuant to section 332 of the Tariff Act of 1930, as amended, the International Trade Commission, not later than 240 days after enactment of this Act, must complete a study with respect to—

(1) competitive factors affecting the domestic rose-growing industry, including competition from imports;

(2) the effect that the European Community's tariff rate for imported roses has on world trade of roses; and

(3) the extent to which unfair trade practices and foreign barriers to trade are impeding the marketing abroad of domestically produced roses.

The International Trade Commission must report the results of the study conducted in accordance with subsection (a) as soon as the study is completed to Congress, the United States Trade Representative, the Secretary of Commerce and the Secretary of Agriculture.

The United States Trade Representative, the Secretary of Commerce, and the Secretary of Agriculture, are urged to use all available remedies, programs, and policies within their respective jurisdictions to assist the domestic rose industry to maintain and enhance its ability to compete in the domestic and world market for roses, if, after their review of the study and report required by the Act, they detemine that such action is appropriate to counter any adverse effects on the domestic rose industry caused by unfair trade practices of foreign competitors. (Sec. 4509)

SUBTITLE F—MISCELLANEOUS AGRICULTURAL PROVISIONS

(47) Allocation of Certain Milk

The *House* bill provides that, notwithstanding any other provision of law, milk produced by dairies—

(1) owned or controlled by foreign persons, and

(2) financed by or with the use of industrial revenue bonds, will be treated as other-source milk, and will be allocated as milk received from producers-handlers for the purposes of classifying producer milk, under the milk marketing program under the Agricultural Adjustment Act, as reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.

As used in the *House* bill, the term "foreign person" will have the meaning given such term under section 9(3) of the Agricultural Foreign Investment Disclosure Act of 1978. This provision would not apply to any dairy that began operation before May 6, 1986. (Sec. 661)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 4601)

(48) Application of Marketing Orders to Imports.

The *House* bill would amend section 8e of the Agricultural Act to provide that the effective period for the prohibition on imports of certain agricultural commodities could be established in advance of the date when a marketing order is in effect if the Secretary finds that, to effectuate the declared policy of the Act, an earlier effective period is needed to prevent the importation into the United States of commodities that would otherwise fail to meet grade, size, quality, or maturity requirements when the imported commodity is marketed during the period of time that regulations are in effect under the order. (Sec. 671(a))

The *Senate* amendment amends section 8e of the Agricultural Adjustment Act (7 U.S.C. 608e-1) to—

(1) provide that no imported commodity may be sold in the United States during the time that a marketing order is in effect unless the imported commodity has been determined to meet the same requirements imposed by the marketing order on the domestic commodity;

(2) authorize the Secretary of Agriculture to provide for a period of time (not to exceed 30 days) in addition to the period of time covered by the original marketing order during which the marketing order requirements would be in effect, if necessary to prevent the circumvention of a seasonal marketing order by imports of commodities covered by such marketing order. This additional period of time could only be imposed on an annual basis.

Before the Secretary could provide for the additional period of time, the Secretary must find that—

(1) during the previous year, significant quantities of imported commodities that are covered by a marketing order were sold in the United States during the period that such marketing order requirements are in effect and that such quantities of imported commodities did not meet the requirements of the domestic marketing order (or would have been sold if not for the imposition of any additional period established by the Secretary);

(2) the importation into the United States of significant quantities of any commodity covered by a domestic marketing order is likely to substantially circumvent the domestic seasonal marketing order; and

(3) there would be an adequate supply of commodities of the variety covered by the marketing order available to consumers at a reasonable price during any additional period established by the Secretary.

The *Senate* amendment defines the term "adequate supply" to mean the prior year's average number of commodity units sold on a per week basis in the United States during the time period to be covered by the additional period, and the term "reasonable price" to mean the average price per commodity unit of the most recent three years on a weekly basis for the time period to be covered by the additional period.

The *Senate* amendment shall be effective with respect to marketing orders effective in 1989 and subsequent years. (Sec. 2171)

The *Conference* substitute would provide that the Secretary of Agriculture may provide for a period of time (not to exceed 35 days) in addition to the period of time covered by a marketing order during which the marketing order requirements would be in effect for a particular commodity if the Secretary determines that such additional period of time is necessary—

(1) to effectuate the purposes of this Act; and

(2) to prevent the circumvention of the grade, size, quality or maturity standards of a seasonal marketing order applicable to a commodity produced in the United States by imports of commodities covered by such marketing order.

In making these determinations, the Secretary, after providing notice and comment, shall consider—

(1) to what extent, during the previous year, imported commodities that did not meet the requirements of an applicable marketing order were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(2) if the importation into the United States of such commodities did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order applicable to any such commodity produced in the United States; and

(3) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

The Department of Agriculture would not be required to produce supply and price data other than that available through official marketing reporting activities of the Department of Agriculture and the United States Customs Service.

Any additional period established by the Secretary in accordance with this provision shall be—

(1) announced no later than 30 days prior to the date such additional period is to be in effect; and

(2) reviewed by the Secretary on request, through notice and comment procedures, at least every 3 years. The purpose of this review would be to determine whether circumstances or practices have changed so that the additional period is no longer needed to prevent circumvention of the seasonal marketing order by imported commodities.

The *Conference* substitute also authorizes the Secretary to make such reasonable inspections as may be necessary to carry out this provision. (Sec. 4603)

(49) Reciprocal Meat Inspection Requirement.

The *Senate* amendment amends Section 20 of the Federal Meat Inspection Act to require the Secretary of Agriculture, based on his/her own initiative or through a request from the House or Senate Agriculture Committees, to determine if a foreign country is applying standards to United States meat imports that are either unsubstantiated or are more strict than those applied to domestically produced meat in such country. If the Secretary determines that a foreign country applies unsubstantiated or discriminatory standards to United States meat imports and the Secretary determines that other trade measures are not adequately addressing the problem, meat articles slaughtered in a plant in such foreign country will be denied entry into the United States unless the Secretary has issued a certification stating that such meat meets all applicable United States health standards. (Sec. 2173)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with amendments. The *Conference* substitute provides that if the Secretary of Agriculture determines that a foreign country applies meat inspection standards that are not related to public health concerns about end-product quality that can be substantiated by reliable analytical methods, the Secretary must consult with the United States Trade Representative and they shall make a recommendation to the President as to what action should be taken. The President may require that a meat article produced in a plant in the foreign country may not be permitted entry into the United States unless the Secretary determines that the meat article has met the standards applicable to meat articles in commerce within the United States. The annual report required under section 20 of the Federal Meat Inspection Act shall include the name of each foreign country that applies standards for the importation of meat articles from the United States that are not based on public health concerns. (Sec. 4604)

The Conferees intend that this authority be used in addition to, or instead of, other authorities, such as those set forth in section 301 of the Trade Act of 1974.

(50) Land Grant Colleges.

The *House* bill expresses the sense of Congress that—

(1) land grant colleges and universities should encourage the study and career objective of international marketing of agricultural commodities and products;

(2) marketing complements production, and international agricultural marketing specialties are needed in a globally competitive world; and

(3) enhanced foreign marketing of United States agricultural commodities ultimately will help relieve stress in the rural economy. (Sec. 610)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 4605)

(51) Egg Imports.

The *Senate* amendment provides that it is the sense of Congress that if egg products from the European Community (EC) are certified for import into the United States, the International Trade Commission (ITC) should monitor such egg imports for a one year period following such certification. The ITC should submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the extent to which egg imports are subsidized or sold below fair market value and the impact of the imports on the domestic egg industry.

The United States Trade Representative should enter into negotiations with the EC with respect to trade barriers of the EC that limit the access of United States egg producers to EC markets and any export subsidies on egg exports of the EC.

If the study conducted by the ITC shows that the duties, tariffs, or subsidies used by the EC have had a substantial negative effect on the domestic egg industry, the United States government, no later than 6 months following the submission of the study, should use all available and appropriate means to encourage the EC to liberalize trading practices concerning eggs and egg products produced in the United States. (Sec. 2175)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with amendments. The *Conference* substitute would strike paragraphs (b) (1) and (3) of the *Senate* amendment. The *Conference* substitute contains a finding that export subsidies of the European Community on egg exports have caused market distortions to the detriment of United States egg producers and that eggs from the Netherlands are about to be certified for import into the United States. It is the sense of Congress that efforts should be made to ensure that the EC liberalizes its trading practices concerning eggs. (Sec. 4606)

Although this provision was modified to delete the provisions relating to the monitoring of egg imports, the conferees urge that the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the President consider requesting an investigation by the International Trade Commission, pursuant to section 332(g) of the Tariff Act of 1930, if imports of eggs or egg products from the European Community become a trade problem.

(52) Korea's Beef Market

The *House* bill contains proposed findings of Congress concerning trade barriers imposed by Korea on beef imports from the United States, including that the beef import ban maintained by Korea is in contravention of Korea's General Agreement on Tariffs and Trade obligations and impairs United States GATT rights, that Korea imposes an unreasonably high 20 percent as valorem tariff on meat products, and that if the Korean import ban were removed, the United States could supply a significant portion of the Korean beef market.

The *House* bill provides that it is the sense of Congress that Korea should take immediate action to fulfill its GATT obligations and permit access to its market by United States beef producers; that the United States Trade Representative should enter into negotiations to gain greater access to the Korean market for United States beef and should address the high tariffs set by Korea and the means by which imported beef is distributed in Korea; that the United States beef industry has not been profitable since 1980; and, that if Korea does not immediately show clear evidence that it is engaging in meaningful liberalization in its market for United States beef, the appropriate officials should use all available and appropriate means, including retaliation, to encourage Korea to open its market to United States beef imports. (Sec. 627)

The *Senate* amendment is substantively similar to the *House* bill except the *Senate* amendment does not contain a provision threatening retaliation and does not contain a provision that the United States beef industry has not been profitable since 1980. (Sec. 974).

The *Conference* substitute adopts the *Senate* provision with amendments. The *Conference* substitute contains certain findings of Congress, including that the 1986

United States trade deficit with Korea was $7.6 billion; that Korea has banned high quality beef imports since May 1985; that such import ban is in contravention of Korea's obligations under the GATT and impairs United States rights under such agreement; that Korea imposes an unreasonably high 20 percent as valorem tariff on meat products; and if the Korean beef market were liberalized, the United States could supply a significant portion of that market for high quality beef.

The *Conference* substitute provides that it is the sense of Congress that—

(1) Korea should take immedite action to fulfill its obligations under the GATT and permit access to its market by United States beef producers;

(2) the United States Trade Representative should aggressively pursue negotiations to gain greater access to the Korean market for United States beef;

(3) such negotiations should also address the high tariffs set by Korea and the means by which imported beef is distributed in Korea; and

(4) if Korea does not show clear evidence that it is engaging in meaningful liberalization in its market for United States beef, the appropriate officials should use all available and appropriate means to encourage Korea to open its market to United States beef imports. (Sec. 4607)

(53) Trade With Japan

The House bill sets forth certain findings of Congress concerning the United States' trade imbalance with Japan and barriers to United States beef imports imposed by Japan. Among other things, the House bill provides that Japanese trade barriers result in a continuous and increasingly unfavorable balance of trade for the United States; Japan maintains unreasonably low quotas on imports of United States beef that are not consistent with Japan's international obligations; and if the import quotas were eliminated, the United States could supply a substantial portion of the Japanese beef market due to the strong comparative advantage of the United States in the production of beef.

The House bill provides that it is the sense of Congress that the United States Trade Representative should enter into negotiations to gain substantially greater access for United States beef to Japanese market; such negotiations should also address high Japanese tariffs, the practices of the Japanese Livestock Industry Promotion Corporation, and the means through which imported beef is distributed in Japan. If there is no meaningful liberalization in its market for United States beef by Japan by March 31, 1988, all appropriate means, including retaliation, should be used to encourage Japan to open its markets to United States beef imports. (Sec. 626)

The Senate amendment contains two provisions concerning trade barriers imposed by Japan. The first sets forth certain findings of Congress concerning United States access to the Japanese beef market, namely that although Japan is the largest potential export market for United States beef, it restricts United States high quality beef imports to a maximum of 58,400 tons per year, sells United States beef to Japanese consumers at an unreasonably high price, and puts excessively high tariffs on imports of United States beef. The Senate amendment also provides that it is the sense of Congress that the United States should press Japan to remove all trade barriers that restrict United States beef exports by March 31, 1988. (Sec. 975)

The second provision sets forth certain findings of Congress concerning trade barriers imposed by Japan, including that the United States' trade imbalance with Japan was over $58 billion in 1986, that Japan maintains unreasonable import restrictions on United States rice, beef and citrus, and that the United States is in a position to supply these products to the Japanese market.

The Senate amendment provides that it is the sense of Congress that Japan should liberalize its trade policies by lowering high tariffs and removing quotas on competitive agricultural exports of the United States in a prompt and timely manner. (Sec. 2114)

The Conference substitute adopts the Senate provisions with amendments. The Conference substitute combines the two provisions. It would set forth certain findings of Congress, namely that the United States requested establishment of a panel pursuant to Article XXIII of the General Agreement on Tariffs and Trade (GATT) to examine Japanese import restrictions on 12 categories of agricultural products. That panel found that Japanese quantitative restrictions on 10 of the 12 product categories are inconsistent with Article XI of the GATT and recommended that Japan eliminate them or otherwise take action to bring them into conformity with the GATT. The rationale behind the GATT panel finding can also be applied to other restrictions that Japan maintains on United States exports, including a virtual ban on imports of United States rice; a very restrictive quota on imports of United States beef; and high tariffs and restrictive quotas on imports of United States citrus.

The Conference substitute provides that it is the sense of Congress that—

(1) The Government of Japan should immediately take actions to comply with the findings of the GATT panel report of November 1987;

(2) The Government of Japan should immediately liberalize its trade policies by lowering high tariffs and removing quotas on agricultural exports oif the United States, including those imposed on rice, beef, and citrus, in order to avoid any damage to the close relations between Japan and the United States; and

(3) The United States should continue efforts to persuade the Government of Japan to remove its trade barriers. (Sec. 4608)

The Conferees are concerned that the Japanese Government continues to evidence a great reluctance to meaningfully liberalize its trade policies. The bilateral agreement concerning beef and citrus between the United States and Japan has expired, yet Japan has blocked the establishment of a panel under the General Agreement on Tariffs and Trade (GATT) concerning the consistency of Japanese quotas with the provisions of the GATT. This unwillingness to liberalize its markets could have serious repercussions on Japan/United States relations.

(54) Amendment to Section 22 of the Agricultural Adjustment Act With Respect to Tobacco.

The *House* bill would amend section 22 of the Agricultural Adjustment Act to provide that, for the purposes of any investigation conducted with respect to tobacco, or articles containing tobacco, imported into the United States, the International Trade Commission must take into account, as if they are costs to the Federal Government, contributions and assessments imposed under sections 106A and 106B of the Agricultural Act of 1949 on tobacco producers in determining whether the imported tobacco or articles materially interfere with the tobacco price support program carried out by the Department of Agriculture. (Sec. 681).

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment. The *Conference* substitute does not amend section 22 of the Agricultural Adjustment Act. The *Conference* substitute provides that it is the sense of Congress that the amount of assessments collected under the no-net cost tobacco program can be an indicator of import injury and material interference with the tobacco price support program administered by the Department of Agriculture. The amendment also provides that it is the sense of the Congress that, for purposes of any investigation conducted under section 22(a) of the Agricultural Adjustment Act with respect to tobacco, or articles containing tobacco, imported into the United States, the International Trade Commission should take into account, as if they are costs to the government, contributions and assessments imposed under sections 106A and 106B of the Agricultural Act of 1949 in determining whether such imported tobacco or articles materially interfere with the tobacco price support program carried out by the Department of Agriculture. (Sec. 4609)

(55) Annual Reporting on Certain Programs.

The *House* bill would require the Secretary of Agriculture to report annually to Congress (after consultation with the Administrator of the Agency for International Development) on the following: The extent that food aid and agriculturally-related economic assistance programs of the previous year, other than direct feeding or emergency food aid programs, that are administered by Federal agencies or nongovernmental entities service direct market development objectives for United States agricultural commodities and products. Programs specifically listed as covered by the reporting requirements are—

(1) programs under the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480);

(2) programs under section 416 of the Agricultural Act of 1949 and the Food for Progress Act of 1985; and

(3) technical and economic assistance programs carried out by the Agency for International Development. (Sec. 612(b))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision.

(56) Imported Food Labeling Act of 1987.

The *Senate* amendment provides that—

(1) the Commissioner of the Food and Drug Administration shall, within 6 months, issue regulations which will provide to the extent practicable for the labeling of food products which are imported or contain a significant amount of imported ingredients; and

(2) the Secretary of Agriculture shall, within 6 months, issue regulations which will provide for the labeling of food products which are imported or contain a significant amount of imported ingredients.

The labels required by these regulations shall to the extent practicable reflect the country of origin of the imported product or the imported ingredients. Nothing in the

Senate provision shall affect existing laws or regulations which apply to restaurants. (Sec. 2176)

The *House* bill contains no comparable provision.

The *Conference* substitute deletes this provision.

(57) Study Concerning Table Grapes.

The *Senate* amendment requires the Secretary of Agriculture to conduct a study of table grapes subject to marketing orders to determine whether during the years 1988 through 1990, imported table grapes are meeting the applicable grade, size, quality, and maturity standards of marketing orders for table grapes in effect at the time the imported table grapes are offered for sale.

In conducting the study, the Secretary is authorized to—

(1) take into account the industry practice of cold storage and report whether the use of cold storage results in significant amounts of below standard imported or domestic commodities being offered for retail sale during the time a marketing order is in effect with respect to such grapes;

(2) provide notice and public comment with respect to such study; and

(3) submit such study to the Agriculture Committees of the House and the Senate by October 1, 1990. (Sec. 2171A)

The *House* bill contains no comparable provision.

The *Conference* substitute deletes this provision.

(58) Private Sector International Trade Development Centers.

The *Senate* amendment would amend The National Agricultural Research, Extension, and Teaching Policy Act of 1977 to provide for the establishment by the Secretary of Agriculture of a program to make grants to existing private sector international trade development centers in the United States for the operation of the centers to enhance the exportation of United States agricultural commodities and agricultural, industrial, and other products. (Sec. 2139A)

The *House* bill contains no comparable provision.

The *Conference* substitute deletes this provision. A similar provision was enacted in the Joint Resolution Making Continuing Appropriations for Fiscal Year 1988.

(59) Export Tobacco Report

The *House* bill provides that, notwithstanding any other provision of law, before the exportation of any tobacco or tobacco product from the United States (including reexports or transshipments of tobacco and tobacco products and any tobacco or tobacco product entering foreign trade zones in the United States) the exporter must prepare a certified report (as described below) and file a copy of the report with the Secretary of Agriculture.

The certified report must specify, by percent, weight, and type—

(1) the quantity of tobacco, contained in the tobacco or tobacco product, that was grown in the United States; and

(2) the quantity of foreign grown tobacco contained in the tobacco or tobacco product.

The Secretary must use the reports to verify tobacco stock reports; estimates of United States produced or grown tobacco that is exported from the United States, for the purposes of determining tobacco poundage quotas under the Agricultural Adjustment Act of 1938; and compliance with the requirements of the export credit programs of the Department of Agriculture.

The Secretary annually must report to Congress, in the aggregate, the information contained in certified reports along with information disclosed by tobacco importers on the identification of end users of imported tobacco, as required under section 213(f) of the Tobacco Adjustment Act. (Sec. 662)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes this provision.

(60) Use of Commodities in Lieu of Cash.

The *Senate* amendment would amend the Foreign Assistance Act of 1961 to provide that in providing assistance under Chapter 4 of Part II of that Act, the President must provide assistance for commodity import programs rather than through cash transfers when the President determines that the need of the recipient and of the United States would be better met. Wherever practicable, recipients of a cash transfer shall use it to procure goods produced in the United States and services performed by a national of the United States. The Comptroller General is to monitor and audit the expenditures of cash transferred under Chapter 4 of Part II of the Act in each receiving such cash. (Sec. 2180B)

The *House* bill contains no comparable provision.

The *Conference* substitute deletes this provision.

(61) Annual Appropriations to Reimburse the Commodity Credit Corporation for Net Realized Losses.

The *Senate* amendment would authorize appropriations to reimburse the Commodity Credit Corporation for its net realized losses to be made by means of a current, indefinite appropriation. (Sec. 2177)

The *House* bill has no comparable provision.

The *Conference* substitute deletes this provision. A similar provision was enacted in the Omnibus Budget Reconciliation Act of 1987.

(62) International Efforts to Reduce Grain Production.

The *House* bill contains proposed findings of Congress that—

(1) worldwide production of grains has overwhelmed demand, resulting in excessive carryover stock;

(2) individual countries cannot reduce their own production without detriment to their own farmers;

(3) it is to the advantage of the United States and other grain-producing countries to reduce production so stocks can be brought closer to demand levels; and

(4) it is the policy of the United States to keep supply and demand in relative balance in concert with other countries.

The *House* bill would require the Secretary of Agriculture to initiate discussions with other major grain-producing countries (including the members of the European Community, Canada, Australia, and Argentina) leading toward an agreement to reduce grain production multilaterally. The Secretary must report to Congress on the progress of these discussions not later than March 1, 1988. (Sec. 663)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision. It is the intent of the Conferees that the negotiators representing the United States in the Uruguay Round of multilateral trade negotiations, when negotiating agricultural trade issues, will consider the problems of worldwide overproduction in some commodities and the corresponding detrimental affects on price and the stability of supply.

(63) Alternative Agricultural Products Research.

The *Senate* amendment contains provisions intended to promote research in the modification of plants and plant materials, using biotechnology and associated research. (Sec. 2195-99)

The *Senate* amendment provides that it is the purpose of the Alternative Agricultural Products Research Act to promote research in the modification of plants and plant materials, and associated research, in order to develop and produce new products and new product uses other than food or traditional fiber products, and thereby utilize the productive capacity of American agricultural land in a way which will not displace or compete with current American Agricultural products. To do this, the *Senate* amendment provides for the establishment of a New Products Research Board to advise the Assistant Secretary of Agriculture for Science and Education, regarding the selection criteria for, and scientific feasibility of, prospective research projects.

The *Senate* amendment contains certain definitions of terms used in the bill including the following:

(1) *Biotechnological Research Project.* A Biotechnological Research Project is a project which is directed toward modifying the genetic material of a plant or in some other way modifying the basic nature of a plant. The term "biotechnology" is intended to be interpreted broadly to fully reflect the extent of advances in biology.

(2) *Development.* As used in the bill, the word development means targeted research that is designed to provide the information necessary to bring a product from the present state of knowledge to the point where the product is viable for the marketplace.

(3) *New Product.* The term new product means an item developed through a biotechnological research or a plant product research project that is primarily not food or traditional fiber. Such products could include production of a novel chemical that is not being produced or a chemical that is not novel but has never been produced using plant materials to a substantial degree.

(4) *Nontraditional Food.* Nontraditional food means a food product that has substantial new properties and that is not now derived from agricultural materials.

(5) *Plant Product Research Project.* This term means a project that is directed towards the development of a new marketable industrial or commercial product, other than a food or traditional fiber product, through the modification of the product of a plant.

(6) *Project.* A project encompasses all the stages of research activities necessary to develop a product from the present level of knowledge to the point where it is economically viable for the marketplace. It may include a substantial number of diverse research activities, some of which might be regarded as fundamental.

(7) *Traditional Fiber.* The term "traditional fiber" refers to fiber derived from agricultural materials but without substantial new properties. The term "non-traditional fiber" refers to a fiber derived from agricultural materials that would, by virtue of its properties, open new markets for agricultural products. Such new properties could be chemical, physical, or mechanical. An exam-

ple of a non-traditional fiber that could be developed under this definition would be a fiber derived from a plant material that would have the strength or heat resistance of a synthetic fiber.

The *Senate* amendment provides for the establishment of a New Products Research Board which shall advise the Secretary on specific targets of opportunity for development of new marketable industrial and commercial products from plants and agricultural materials; recommend projects for funding; establish expert advisory committees to assist the Board; and report on the progress of the funded projects.

The Board shall be composed of six members, including two members appointed by the Assistant Secretary of Agriculture, and one member appointed by each of the following organizations: National Science Foundation, Department of Energy, Department of Commerce, and the Office of Technology Assessment. The membership of the Board is composed of government employees to avoid conflict-of-interest problems. The Board may appoint necessary personnel, establish expert committees, utilize the services and facilities of the Department of Agriculture, hold hearings, and recommend the establishment of regulations and other procedures.

Appropriate projects shall target development of a new crop or modification of an existing crop or crop material. Projects should be selected on the basis of (1) the prospect of developing viable technologies; (2) the need for a new product of the type contemplated; (3) the potential market size of the new product; (4) the time period needed to develop the new product; (5) the likely impact of the product on reducing Federal crop subsidies; (6) the ability to grow the plant used to produce the new product at a profit; (7) the availability of the expertise and facilities required to conduct the proposed research; and (8) the unavailability of appropriate funding from other sources.

No less than ½ of the appropriated funds shall be allocated to biotechnological research projects. Funding under this bill will be allowed to consortia, unless the Board finds that a project is more appropriate for only a single research entity. The Secretary shall fund not less than 20 projects within the 36-month period beginning on the date of enactment of this bill and subject to appropriations.

The *Senate* amendment would authorize the sum of $75 million to be appropriated for fiscal year 1988 and annually thereafter for a period of 19 years for the purposes of carrying out this research program.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the Senate provision.

AGRICULTURAL AID AND TRADE MISSIONS

(64) Definitions

The *Senate* amendment provides that the term "United States agricultural aid and trade programs" includes the food for progress program established under section 1110 of the Food Security Act of 1985. (Sec. 2141(4).).

The *House* bill makes no specific reference to section 1110 of the Food Security Act.

The *Conference* substitute deletes the Senate provision.[1]

(65) Establishment of missions

The *House* bill provides that the Secretary of Agriculture, the Secretary of State, and the Administrator must jointly establish the agricultural and aid trade missions. (Sec. 633(a).).

The *Senate* amendment provides that, under the direction of the Secretary of Agriculture, the Secretary of State, the Administrator, and the President of the Overseas Private Investment Corporation must establish the agricultural aid and trade missions. (Sec. 2142(a).).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(66) Composition of missions

The *Senate* amendment provides that a mission established in an eligible country must include representatives of the Overseas Private Investment Corporation and tax-exempt non-profit agribusiness organizations. (Sec. 2142(b).).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(67) Terms and compensation of members

The *House* bill provides that the terms of members of a mission terminates on the submission of the required report. Mission members who are not United States Government employees must serve without compensation except for travel expenses (Sec. 633(c) and (d).).

The *Senate* amendment is substantively the same. (Sec. 2142(a) and (d).).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(68) Time limits for completion of missions, required number of missions, required number of missions, and additional missions

The *House* bill provides that initial missions must be completed in 7 countries within 6 months of enactment of the bill and in 8 additional countries within 1 year of enactment. Additional missions could be established after completion of the first 15. (Sec. 634(a) and (b).).

The *Senate* amendment is the same, except that initial missions are required in 8 eligible countries. 16 missions are required to be established. (Sec. 2143(b) and (c).).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(69) Selection of countries: criteria

(a) The *House* bill provides that the Secretary of Agriculture and the Administrator jointly must select foreign countries for missions. (Sec. 634(c).).

The *Senate* amendment provides that the Secretary of Agriculture must select countries to which missions will be established. (Sec. 214(a).).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(b) The *House* bill provides that in order for a foreign country to be selected for a mission, it must represent a range of per capita income levels in the low to middle levels. (Sec. 634(c).).

The *Senate* amendment provides that the Secretary must select countries that are in various stages of development and have various income levels. (Sec. 2143(a).).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(c) The *Senate* amendment provides that participation must be mutually advantageous to the country and the United States. (Sec. 2143(a).).

The *House* bill contains no comparable provisions.

The *Conference* substitute deletes the *Senate* provision.

The *House* bill provides that a priority must be given to foreign countries for which participation in United States aid and trade programs would be mutually advantageous, taking into account the potentials for economic development for the foreign country, and increased trade opportunities for the United States through the establishment of markets for United States agricultural commodities and products. (Sec. 634(c).).

The *Senate* amendment provides that the Secretary must consider past participation in United States food programs, experience with United States agricultural aid trade programs, and import market potential. (Sec. 2143(a).).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(e) The *Senate* amendment provides that notwithstanding any other provision of section 2143, the Secretary may establish a mission in Poland. (Sec. 2143(d).).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(70) Functions of members

The *House* bill provides that members of a mission must meet with representatives of government agencies of the United States and the eligible country, as well as commodity boards, private enterprises, private voluntary organizations, and cooperatives that operate in the eligible country, to assist in planning the extent to which United States agricultural aid and trade programs could be used in a mutually beneficial manner to meet the food and economic needs of the country. (Sec. 635.).).

The *Senate* amendment is the same except that mission members must also meet with representatives of international organizations. (Sec. 2144.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(71) Mission reports

The *House* bill provides that not later than 60 days after the completion of a mission, the mission must submit to the President, the Committee on Agriculture and the Committee on Foreign Affairs of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Secretary of Agriculture, the Secretary of State, and the Administrator a report that contains the findings and recommendations of the mission in carrying out its responsibilities. (Sec. 636.).

The *Senate* amendment is the same except that the report must also be provided to the Committee on Foreign Relations of the Senate, and the President of the Overseas Private Investment Corporation. (Sec. 2145.).

The *Conference* substitute deletes both the *House* and *Senate* Provisions.

(72) Progress reports

The *House* bill provides that the Secretary of Agriculture, the Secretary of State, and the Administrator must jointly submit to the Committee on Agriculture and the Committee on Foreign Affairs of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the

[1] NOTE.—Public Law 100-202, making further continuing appropriations for the fiscal year ending September 30, 1988, contains provisions that resolve the essential differences between the *House* bill and the *Senate* amendment with regard to the establishment of agricultural aid and trade missions. Therefore, the managers have not included such provisions in the *Conference* Substitute.

Senate, quarterly reports on progress made in implementing the recommendations made by missions. (Sec. 637.).

The *Senate* amendment is the same except that the report must also be submitted to the Committee on Foreign Relations of the Senate. (Sec. 2146.).

The *Conference* substitute deletes both the *House* and *Senate* Provisions.

(73) Use of CCC

The *House* bill provides that the Secretary of Agriculture must use the facilities, services, authorities, and funds of the Commodity Credit Corporation. (Sec. 638.).

The *Senate* amendment provides that within the funds made available to the Commodity Credit Corporation, the Secretary must use the facilities, services, authorities, and funds of the Corporation during a fiscal year. (Sec. 2147.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

AMENDMENTS TO THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954

(74) Requirement for section 108 uses

The *Senate* amendment provides that for each of the fiscal years 1988 through 1990, each agreement entered into under title I must provide for some sale for foreign currencies for use under section 108, except for agreements with a country the President determines is incapable of participating in section 108. (Sec. 2151.).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.[2]

(75) Incentive to use section 108

The *Senate* amendment provides that, in implementing title I, favorable consideration must be provided in the allocation of commodities to countries that promote the private sector through use of section 108. (Sec. 2152.).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(76) Self-help measures

The *Senate* amendment provides that the President, prior to entering into an agreement under title I, must consider the extent to which the recipient country is undertaking measures to promote the conservation and study of biological diversity. (Sec. 2153.).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(77) Use of cooperatives

The *Senate* amendment provides that the President, in providing commodities to developing countries under title II, must utilize, to the maximum extent practicable, non-profit voluntary agencies or cooperatives. (Sec. 2154.).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

[2] NOTE.—Public Law 100-202, making further continuing appropriations for the fiscal year ending September 30, 1988, contains provisions that resolve the essential differences between the *House* bill and the *Senate* amendment with regard to amendments to the Agricultural Trade and Development Act of 1954. Therefore, the managers have not included such provisions in the *Conference* substitute.

(78) Non-emergency programs under title II

The *House* bill provides that a written agreement between the United States and the recipient country, regarding the specific uses to which foreign currency generated by sales of commodities, will not be required for nonemergency programs conducted by nonprofit voluntary agencies or cooperatives. (Sec. 318(b).).

The *Senate* amendment is substantively the same. (Sec. 2155.).

The *Conference* substitute deletes both the *House* and *Senate* provision.

(79) Reports on sales, barter, and use of foreign currency proceeds

The *House* bill provides that, not later than February 15, 1988, and annually thereafter, the President must report to Congress on sales and barter, and use of foreign currency proceeds, during the preceding fiscal year. The report must include information on—

(1) the quantity of commodities furnished for sale or barter;

(2) the amount of funds (including dollar equivalents for foreign currencies) and value of services generated from sales and barter in the preceding fiscal year;

(3) how funds and services were used;

(4) the amount of foreign currency proceeds that were used in the preceding fiscal year, and the percentage of the quantity of all commodities and products furnished.

(5) the President's best estimate of the amount of foreign currency proceeds that will be used, in the then current fiscal year and the next following fiscal year (if all requests for such use are agreed to), and the percentage that the estimated use represents of the quantity of all commodities and products that the President estimates will be furnished;

(6) the effectiveness of sales, barter, and use during the preceding fiscal year in facilitating the distribution of commodities and products;

(7) the extent to which sales, barter, or uses—

(a) displace or interfere with commercial sales of United States agricultural commodities and products that otherwise would be made;

(b) affect usual marketings of the United States;

(c) disrupt world prices of agricultural commodities or normal patterns of trade with friendly countries; or

(d) discourage local production and marketing of agricultural commodities in the countries in which commodities and products are distributed; and

(8) the President recommendations, if any, for changes to improve the conduct of sales, barter, or use activities. (Sec. 641.).

The *Senate* amendment is substantively the same. (Sec. 2156.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(80) Uses of foreign currencies under title II

(a) The *House* bill provides that foreign currencies generated from partial or full sales or barter of commodities by a nonprofit voluntary agency or cooperative may be used to—

(1) transport, store, or distribute agricultural commodities, to ensure that the commodities reach their final users in usable condition or otherwise enhance the effectiveness of the use of commodities donated; and

(2) implement income generation, community development, health, nutrition, cooperative development, or agricultural programs, or other developmental activities. (Sec. 318(4).).

The *Senate* amendment is substantively the same, except that foreign currencies generated from any partial or full sales or barter of commodities by a nonprofit voluntary agency or cooperative must be used for the same purposes as identified in the *House* bill. No mention is made of using the foreign currencies to store commodities. (Sec. 2157.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(b) The *House* bill increases, from 5 percent to 10 percent, the minimum value of all commodities, for each fiscal year, that may be used to produce foreign currency. (Sec. 318(b)(4).).

The *Senate* amendment is substantively the same. (Sec. 5157.).

The *Conference* substitute deletes the *House* and *Senate* provisions.

(81) Period for review of title II proposals

The *House* bill provides that if a proposal to make agricultural commodities available under title II is submitted by a nonprofit voluntary agency or cooperative with the concurrence of the appropriate U.S. Government field mission or if a proposal to make agricultural commodities available to a nonprofit voluntary agency or cooperative is submitted by the U.S. Government field mission, a response to that proposal must be provided within 45 days following submission of the proposal. The response must detail the reasons for approval or denial of the proposal. If the proposal is denied, the response must specify the conditions that would need to be met for the proposal to be approved. (Sec. 642.).

The *Senate* amendment provides that not later than 45 days after submission to the Agency for International Development office in Washington, Washington, D.C., the President must take final action on a proposal submitted by a nonprofit voluntary agency or cooperative, with the concurrence of the field mission, for the delivery of commodities requested. (Sec. 2158.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(82) Period for review and comment on title II guidelines

The *House* bill provides that not later than 30 days before the issuance of a final guideline issued to carry out title II, the President must—

(1) provide notice of the proposed guideline to nonprofit voluntary agencies and cooperatives that participate in programs under title II, and other interested persons, that the proposed guideline is available for review and comment;

(2) make the proposed guideline available, on request, to the agencies, cooperatives, and others; and

(3) take any comments received into consideration before the issuance of the final guideline. (Sec. 642.).

The *Senate* amendment is substantively the same. (Sec. 2158.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(83) Deadline for submission to CCC of title II commodity orders

The *Senate* amendment provides that not later than 15 days after receipt of a call forward from a field mission for commodities or products that meet the requirements of title II, the order for the purchase or the supply, from inventory, of the commodities

or products must be transmitted to the Commodity Credit Corporation. (Sec. 2158.).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

AMENDMENT TO THE FOOD SECURITY ACT OF 1985

(84) Farmer-to-farmer program

The *Senate* amendment extends for 3 years the farmer-to-farmer program. (Sec. 2159.).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.[3]

AMENDMENTS TO SECTION 416 OF THE AGRICULTURAL ACT OF 1949

(85) Eligible commodities

The *House* bill provides that wheat, rice, feed grains, and products of any eligible price support commodity can be used under the section 416 program.

The *Senate* amendment is substantively the same.

The *Conference* substitute deletes both the *House* and Senate provisions.[4]

(86) Availability of commodities

The *House* bill provides that if agricultural cmmodities are made available under section 416(b) to a friendly country, the Secretary of Agriculture would be required to provide an opportunity to nonprofit and voluntary agencies and cooperatives to obtain the commodities for food aid programs in that country. (Sec. 644.).

The *Senate* amendment is substantively the same. (Sec. 2162.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(87) Multiyear agreements

The *House* bill provides that, subject to the availability of commodities each fiscal year, the Secretary is encouraged to approve multiyear agreements to make agricultural commodities available for distribution or sale by the recipients if the agreement otherwise meets the requirements of section 416(b). (Sec. 645.).

The *Senate* amendment is substantively the same, except that, on request, the Secretary must approve multiyear agreements. (Sec. 2163.).

The *Conference* substitute deletes both the *House* and *Senate* provision.

(88) Foreign currency uses

The *House* bill provides that foreign currencies generated from partial or full sales or barter of commodities by a nonprofit and voluntary agency or cooperative may be used to—

(1) transport, store, or distribute agricultural commodities, to ensure that such commodities reach their final users in usable condition or otherwise enhance the effectiveness of the use of commodities donated under section 416(b); and

(2) implement income-generation, community development, health, nutrition, cooperative development, or agricultural programs or other development activities. (Sec. 646(a).).

The *Senate* amendment is substantively the same, except that foreign currencies generated from sales or barter must be used for the activities listed in the *House* provision. No mention is made of using the foreign currencies to store commodities. (Sec. 2164(a).).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(89) Floor on monetization

The *House* bill will increase, from 5 percent to 10 percent, the minimum monetization of section 416(b) commodities that must be allowed in a fiscal year. (Sec. 646(b).).

The *Senate* amendment is substantively the same. (Sec. 2164(b).).

The *Conference* substitute deletes both the *House* and *Senate* provision.

(90) Period for review of section 416(b) proposals

The House bill provides that if a proposal to make agricultural commodites available under section 416(b) is submitted by a nonprofit and voluntary agency or cooperative with the concurrence of the appropriate U.S. Government field mission or if a proposal to make such commodites available to a nonprofit and voluntary agency or cooperative is submitted by the U.S. Government field mission, a response to that proposal must be provided within 45 days following submission of the proposal. The response must detail the reasons for approval or denial of the proposal. If the proposal is denied, the response must specify the conditions that would need to be met for the proposal to be approved. (Sec. 647.).

The *Senate* amendment provides that not later than 45 days after submission to the Agency for International Development office in Washington, D.C., the Secretary must take final action on a proposal submitted by a nonprofit and voluntary agency or cooperative, with the concurrence of the field mission, for the delivery of commodities requested. (Sec. 2165.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(91) Period for review and comment on section 416(b) guidelines

The *House* bill provides that not later than 30 days before the issuance of a final guideline issued to carry out section 416(b), the Secretary of Agriculture must—

(1) provide notice of the proposed guideline to nonprofit and voluntary agencies and cooperatives that participate in programs under section 416(b), and other interested persons, that the proposed guideline is available for review and comment;

(2) make the proposed guideline available for review and comment;

(3) take any comments received into consideration before the issuance of the final guideline. (Sec. 647.).

The *Senate* amendment is substantively the same. (Sec. 2165.).

The *Conference* substitute deletes both the *House* and *Senate* provisions.

(92) Deadline for submission to CCC of section 416(b) commodity orders

The *Senate* amendment provides that not later than 15 days after receipt of a call forward from a field mission for commodities or products that meet the requirements of section 416, the order for the purchase or the supply, from inventory, of the commodities or products must be transmitted to the Commodity Credit Corporation. (Sec. 2165.).

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(93) Minimum quantities of eligible commodities

The *House* bill will increase—

(1) the grain and oilseeds specific minimum tonnage figure from 500,000 to 800,000 metric tons; and

(2) the dairy products specific minimum tonnage figure from 150,000 to 200,000 metric tons.

The *House* bill also provides that if the increase in minimum metric tonnage will result in additional budget outlays for a fiscal year, the increased tonnage may not be provided unless the additional outlays are approved in advance in an appropriation Act. (Sec. 648.).

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision.

SUBTITLE G—PESTICIDE MONITORING IMPROVEMENTS

House bill

The House bill does not contain a provision.

Senate amendment

The Senate amendment requires the Secretary of Health and Human Services to take various actions relating to the monitoring of imported agricultural commodities for pesticide residues. These actions include the development of an annual sampling plan, the compilation of an annual summary of monitoring results, and the preparation of an annual report to Congress, including a description of research conducted to develop improved pesticide detection methods.

Conference Agreement

The conferees have adopted a substitute provision. Section 4702 requires the Secretary of Health and Human Services to implement computerized data management systems which will generate annual summaries of monitoring results. One of the central requirements of this provision is a mandate to the Secretary to use the computerized data systems "as soon as practicable" to summarize the volume of each type of food product subject to the requirements of the Food, Drug, and Cosmetic Act which is imported into the United States and which has an entry value which exceeds an amount established by the Secretary.

Under this provision, FDA is expected to evaluate carefully the alternative means of gathering volume data on imported food and to select the most cost-effective means of accomplishing this objective. The alternative methods of gathering such data range from the automated conversion of historical Census or Customs data to the use of on-line computer systems, such as the proposed Import Support and Information System (ISIS).

The requirements of subsections 4702 (a)(2) and (c) of the conference agreement mandate the collection of volume data only where the product has an entry value which exceeds an amount established by the Secretary. This provision recognizes that the Secretary is likely to rely on data collected by the U.S. Customs Service in implementing this provision. Since the Customs Service currently does not collect comprehensive information on entries with a value lower than $1,000, this provision allows the Secretary to exclude such entries from the volume compilation.

---

[3] NOTE.—The farmer-to-farmer program was extended through September 30, 1990 by Public Law 100-277.

[4] NOTE.—Public Law 100-277 includes provisions that resolve the essential differences between the *House* and *Senate* amendment regarding amendments to section 416 of the Agricultural Act of 1949. Therefore, the managers have not included such provisions in the *Conference* substitute.

Section 4703 of the conference agreement directs the Secretary of Health and Human Services to enter into cooperative agreements with the governments of the countries which are the major sources of food imports subject to pesticide monitoring by the Food and Drug Administration. It is anticipated that approximately 30 countries will be encompassed by this provision. In implementing this authority, the conferees intend that the Secretary will place priority attention on developing cooperative agreements with those countries which are not covered by existing data sources on commodity-specific pesticide use available to FDA on an ongoing basis, such as the Battelle World Agrochemical Databank.

Although this provision does not mandate the development of cooperative agreements with countries which are not major sources of food imports into the United States, the conferees recognize that imports of certain commodities from such countries may be significant in terms of their volume, dietary significance, or potential pesticide problems. Thus, the conferees expect that the Secretary will aggressively seek to obtain data on pesticide use patterns from smaller sources of food imports where necessary to conduct an effective pesticide monitoring program.

In calling for the provision of current pesticide use information, the conferees intend that the Secretary will seek to obtain information specific to particular production areas of the major food importing countries. Aggregate countrywide data does not reveal important regional and local patterns in pesticide use, and such regional variations may be specifically significant in large geographically diverse countries, such as Brazil or Canada. Knowledge of such variations will assist FDA greatly in targeting specific pesticides for analysis.

However, the conferees recognize that in certain foreign countries "production region" information will not be available from governmental authorities and that only countrywide use data will be available. In such cases, the conferees intend that the Secretary will enter cooperative agreements to obtain any countrywide data which is deemed valuable to the Food and Drug Administration and will seek, to the extent practicable, to obtain the more specific "production region" data from the sources described in paragraph (2).

At the start of each negotiation to develop a cooperative agreement, the FDA must notify in writing the Department of Agriculture, the Environmental Protection Agency, and the Department of State. In addition, the FDA will coordinate, as approriate, with these agencies during the course of the negotiations. The conferees also expect that the FDA will coordinate, as appropriate, with other Federal agencies and international organizations and agencies, such as those sponsored by the United Nations.

In addition, the conferees intend that the Secretary will seek, as appropriate, the assistance of private entities, such as export associations and grower associations, in achieving the objectives of this provision. Such sources can play a particularly significant role in providing pesticide use information.

The conferees expect that the Secretary will assure the active involvement of personnel from both the headquarters and appropriate field offices of the Food and Drug Administration in developing the cooperative agreements mandated under Section 4703 and gathering pesticide use information from the sources described in subsection (b)(2). The involvement of district personnel is especially important when food imports from a particular country are heavily concentrated in such FDA district.

It is clear that the collection of pesticide use information by FDA will result in significant improvements in the agency's monitoring program only if such information is readily available to the agency's field offices. In view of this fact, the conferees expect that the Food and Drug Administration will carefully evaluate the inclusion of pesticide use data in the agency's proposed Import Support and Information System or in a separate computerized data base accessible to the field offices.

In view of the important role of several State agencies in the monitoring of imported food for pesticide residues, this provision requires that the foreign pesticide use information generated under this Section be "made available" to such State agencies. In so doing, the conferees intend that the FDA will alert those State agencies engaged in monitoring imported food for pesticide residues about the availability of foreign pesticide use information and provide such information upon request.

The process of developing cooperative agreements under Section 4703 is expected to further the establishment of active working relationships between the Food and Drug Administration and officials responsible for pesticide programs in the major countries exporting food products to the United States. The conferees anticipate that the establishment of such improved working relationships will lead to a better understanding by such countries of the pesticide tolerance requirements of the Federal Food, Drug, and Cosmetic Act and will facilitate FDA's provision to such countries of current information on violations of the Act involving food products in such countries.

In addition, the conferees expect that as one of the by-products of the negotiating process, FDA will obtain information idenfifying: (1) the individuals and agencies responsible for the registration and monitoring of the use of pesticides in the major food importing countries; (2) the laboratories utilized by the governments of such foreign countries for pesticide residue monitoring; and (3) any manuals or other publications which set out the pesticides approved for use in such countries and their approved application rates and residue levels. It is anticipated that such information will be made available to the FDA field offices engaged in the monitoring of imported food for pesticide residues.

Section 4704 of the conference agreement requries the Secretary to develop a research plan for the development and validation of new and improved methods for the detection of pesticide residues and mandates a review to determine the potential use of rapid pesticide methods. This provision is intended to dovetail with a workshop on pesticide analytical methods conducted by the Office of Technology Assessment on March 14-16, 1988. It is expected that FDA and EPA officials will thoroughly consider the findings of the workshop in developing the long-range plan and review envisioned under this provision and will seek peer review. It also is intended that the agencies will consult fully with the United States Department of Agriculture in this effort.

The conferees intend that the long-range plan developed under Section 4704 will cover a period of approximately five years and that the plan and review will focus priority attention on methods to detect moderate to high health hazard pesticide residues which are not covered by existing multiresidue methods. The Section 4704 plan also should provide resource estimates associated with various alternative policy options.

TITLE V—FOREIGN CORRUPT PRACTICES AMENDMENTS; INVESTIMENT; AND TECHNOLOGY

Subtitle A—Foreign Corrupt Practices Amendments; Review of Certain Acquisitions

PART I—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS

Title of the Act—Foreign Corrupt Practices Act Amendments of 1988

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment established the title of the Act as the "Foreign Corrupt Practices Act of 1987."

Conference agreement. The House receded to the Senate, with an amendment substituting "1988" for "1987."

Findings and Conclusions

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment contained three Congressional findings and two conclusions. The findings noted (1) the significant contribution Congress made in enacting the Foreign Corrupt Practices Act (FCPA) in 1977, while citing (2) unnecessary concern among exporters about the scope of the Act and (3) unnecessary and costly paperwork burdens imposed on issuers of securities by unclear and excessive accounting standards. The conclusions stated that (1) the principal objectives of the FCPA should be maintained because they are important to the nation and our trade relationships and (2) exporters should not be subject to conflicting demands by diverse agencies enforcing the FCPA.

Conference agreement. The Senate receded to the House.

Accounting

Penalties for Violations of Accounting Standards

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment amended Section 13(b) of the Securities Exchange Act of 1934 to provide that no criminal liability shall be imposed for failing to comply with the FCPA's books and records or accounting control provisions unless a person knowingly circumvents a system of internal accounting controls or knowingly falsifies books, records, or accounts kept pursuant to Section 13(b)(2) of the Exchange Act.

Conference agreement. The House receded to the Senate. The Conferees intend to codify current Securities and Exchange Commission (SEC) enforcement policy that penalties not be imposed for insignificant or technical infractions or inadvertent conduct. The amendment adopted by the Conferees acomplishes this by providing that criminal penalties shall not be imposed for failing to comply with the FCPA's books and records or accounting control provisions. This provision is meant to ensure that criminal penalties would be imposed where acts of commission or omission in keeping books or records or administering accounting controls have the purpose of falsifying books, records or accounts, or of circumventing the accounting controls set forth in the Act. This would include the deliberate falsification of books and records and other

conduct calculated to evade the internal accounting controls requirement.

Accounting Practices of Subsidies

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment added a new paragraph (b)(6) to Section 13(b) of the Exchange Act to define the responsibility of an issuer with respect to the accounting practices of a domestic or foreign subsidiary in which the issuer owns an interest of 50 percent or less. The provision provided that such an issuer's responsibility would be discharged where the issuer makes a good-faith effort to cause the subsidiary to comply with the requirements of Section 13(b)(2).

Conference agreement. The House receded to the Senate. The amendment recognizes that it is unrealistic to expect a minority owner to exert a disproportionate degree of influence over the accounting practices of a subsidiary. The amount of influence which an issuer may exercise necessarily varies from case to case. While the relative degree of ownership is obviously one factor, other factors may also be important in determining whether an issuer has demonstrated good-faith efforts to use its influence.

Cost/benefit Test

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment provided that, for purposes of Section 13(b)(2), the term "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their affairs, having in mind a comparison between benefits to be obtained and costs to be incurred in obtaining such benefits.

Conference agreement. The House receded to the Senate, with an amendment deleting the cost-benefit test. The conference committee adopted the prudent man qualification in order to clarify that the current standard does not connote an unrealistic degree of exactitude or precision. The concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance. The Conferees therefore deleted the Senate cost-benefit language as superfluous and in response to concerns that such a statutory provision might be abused and weaken the accounting provisions at a time of increasing concern about audit failures and financial fraud and resultant recommendations by experts for stronger accounting practices and audit standards. *See, e.g.*, "Report of the National Commission on Fraudulent Financial Reporting, October 1987."

Prohibited Corrupt Payments by Issuers

Repeal of Section 30A

House bill. The House bill contained no comparable provision.

Senate amendment. The Senate amendment repealed Section 30A of the Exchange Act and placed in the Justice Department all jurisdiction for enforcing the anti-bribery provisions of the Act. In addition, it required the SEC to transmit to the Justice Department evidence that an issuer had violated the FCPA, and the Department was required to report annually to the appropriate Congressional oversight committees on the disposition of any such referrals.

Conference agreement. The Senate receded to the House, with an amendment making conforming amendments to Section 30A of the Exchange Act to reflect the provisions of the conference substitute for Section 104 of the FCPA (with the exception of granting injunctive authority to the Department of Justice). The conferees intend that the SEC remain responsible for civil enforcement of the FCPA under Section 30A. The Conferees intend such conforming changes to have the same meaning and impact in Section 30A of the Exchange Act as they have in Section 104 of the FCPA, as described below.

Prohibited Corrupt Payments by Domestic Concerns

Anti-bribery Provision—Definition of Payments Prohibited under FCPA: "Official Function" v. "Legal Duty"

House bill. The House bill, in keeping with present law, included within prohibited payments those made to foreign officials for the purpose of inducing the official to make a "decision to fail to perform his or its *official functions.*" (emphasis added)

Senate amendment. The Senate amendment changed the approach under present law to one which included within prohibited payments those made to induce a foreign official "to do or omit to do any act in *violation of his legal duty* as a foreign official." (emphasis added)

Conference agreement. The House receded to an amended Senate provision which would prohibit payments to any foreign official for the purpose of "influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official." This language conforms to the domestic bribery standard found at 18 U.S.C. 201.

Anti-bribery Provision—Definition of Payments Prohibited under FCPA: Legislative or Other Action

House bill. The House bill provided that the prohibition under current law against the use of corrupt payments to foreign officials for the purpose of obtaining or retaining business includes payments for "procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government."

Senate amendment. The Senate amendment contained no comparable provision.

Conference agreement. The House receded to the Senate. The Conferees wish to make clear that the reference to corrupt payments for "retaining business" in present law is not limited to the renewal of contracts or other business, but also includes a prohibition against corrupt payments related to the execution or performance of contracts or the carrying out of existing business, such as a payment to a foreign official for the purpose of obtaining more favorable tax treatment. *See, e.g.*, the *United Brands* case. The term should not, however, be construed so broadly as to include lobbying or other normal representations to government officials.

Anti-bribery provision—Standard of Liability for Acts of Third Parties (Agents)

House bill. The House bill changed current law, which applies civil and criminal liability to firms and individuals who make payments to third parties "knowing or having reason to know" that the payment would be used by that third party for purposes barred under the statute.

In provisions concerned with the requisite states of mind applicable to offenses known as "third party bribery" (the furnishing of money or any other "thing of value" by an agent for the purpose of bribing foreign officials), the House bill contained state-of-mind requirements (proposed Section 30A(a)(3) and proposed Section 104(a)(3)) of "knowing or recklessly disregarding" that the money in question would be used for bribery.

Under the House bill, criminal liability would have applied for firms and individuals who made payments to third parties while "knowing" that the payment would be used by the third party for purposes barred under the statute. The House bill contained a definiton (proposed Section 30A(f)(2) and proposed Section 104(h)(4)) of the "knowing" state of mind applicable in the case of the foreign corrupt practice of "third party" bribery by securities issuers and domestic concerns. "Knowing" was defined as being "aware or substantially certain" or "consciously disregarding a high probability" that a payment would be made for prohibited purposes. Civil liability would have applied if the payment were made to a third party while "racklessly disregarding" that all or a portion of the payment would be made for purposes barred under the statute. "Reckless disregard" was defined (proposed Section 30A(f)(3) and proposed Section 104(h)(5)) to included "awarness" and disregard of a "substantial risk" that a third party would transmit a prohibited payment.

Senate amendment. The Senate bill addresses the state-of-mind requirement for third-party bribe offenses by making it unlawful "corruptly to direct or authorize, expressly or by a course of conduct" a third party to make such payments. The phrase "course of conduct" was not defnied in the Senate amendment, but the Senate report stated that the standard was meant to preclude a "head-in-the-sand" approach involving willful ignorance of facts and circumstances underlying the subject transaction which would indicate the payment of a bribe.

Conference agreement. The Senate receded to the House with an amendment. The conference substitute retains the "knowing" requirement and deletes the "recklessly disregarding" requirement as those terms were defined in proposed Sections 30A(f) (2) and (3) and 104(h)(4) and (5). The compromise bill adopts a modified version of the House bill regarding these provisions and encompasses the concepts of "conscious disregard" or "willful blindness." *See generally United States* v. *Bright*, 517 F.2d 584 (2d Cir. 1975); H. Rept. No. 96-1396, 96th Cong., 1st Sess., 35 (1980). The Conferees intend that the requisite "state of mind" for this category of offense include a "conscious purpose to avoid learning the truth." *United States* v. *Jacobs*, 475 F.2d 270, 277-88 (2d Cir. 1973). Thus, the "knowing" standard adopted covers both prohibited actions that are taken with "actual knowledge" of intended results as well as other actions that, while falling short of what the law terms "positive knowledge," nevertheless evidence a conscious disregard or deliberate ignorance of known circumstances that should reasonably alert one to the high probability of violations of the Act.

In clarifying the existing foreign anti-bribery standard of liability under the Act as passed in 1977, the Conferees agreed that "simple negligence" or "mere foolishness" should not be the basis for liability. However, the Conferees also agreed that the so-called "head-in-the-sand" problem—variously described in the pertinent authorities as "conscious disregard," "willful blindness" or "deliberate ignorance"—should be covered so that management officials could not take refuge from the Act's prohibitions by their unwarranted obliviousness to any action (or inaction), language or other "signalling

device" that should reasonably alert them of the "high probability" of an FCPA violation.

The "head-in-the-sand" problem is not unique to this area of criminal law and occurs in a variety of contexts, perhaps the most common being the situation where a person acquires property under "suspicious" circumstances and is charged with "knowledge" that it is stolen. Courts and commentators have considered such behavior to be "distinct from, but *equally culpable* as actual knowledge." *See* G. Williams, *Criminal Law: The General Paret,* sec. 57 at 157 (2d. ed. 1961). (emphasis added)

Federal case law has discussed the carefully-drawn elements that comprise the "head-in-the-sand" state of mind in other contexts. The Conferees agree with the reasoning found in such decisions as *United States* v. *Jewell,* 532 F.2d 679 (9th Cir. 1976); *United States* v. *Bright,* 517 F.2d 584 (2d Cir. 1975); *United States* v. *Jacobs,* 470 F.2d 270, 287 n.37 (2d Cir.), *cert. denied sub nom. Lavellle* v. *United States, 414 U.S. 821 (1973). See also* H. Rept. No. 96-1396, 96th Cong., 1st Sess. 35 (1988). The knowledge requirement is not equivalent to "recklessness." It requires an awareness of a high probability of the existence of the circumstance. As the Court stated in the *Jacobs* case:

"Knowledge that the goods have been stolen may be inferred from circumstances that would convince a man of ordinary intelligence that this is the fact. The element of knowledge may be satisfied by proof that a defendant deliberately closed his eyes to what otherwise have been obvious to him.

"Thus, if you find that a defendant acted with reckless disregard of whether the bills were stolen and with a conscious purpose to avoid learning the truth, the requirement of knowledge would be satisfied unless the defendant actually believed they were not stolen.

* * * * *

"* * * You should scrutinize the entire conduct of the defendant at or near the time the offense are [*sic.*] alleged to have been committed." 475 F.2d 287 n.37 (emphasis added)

Accordingly, the Conferees intend that the knowledge requirement reflect existing law, including provision for cases of deliberate ignorance. In such cases, knowledge of a fact may be inferred where the defendant has notice of the high probability of the existence of the fact and has failed to establish an honest, contrary disbelief. The inference cannot be overcome by the defendant's "deliberate avoidance of knowledge," *United States* v. *Manrique Aribizo,* 833 F.2d 244, 249 (10th Cir. 1987), his or her "willful blindness," *United States* v. *Kaplan,* 832 F.2d 676, 682 (1st Cir. 1987), or his or her "conscious disregard," *United States* v. *McAllister,* 747 F.2d 1273, 1275 (9th Cir. 1984), of the existence of the required circumstance or result. As such, it covers any instance where "any reasonable person would have realized" the existence of the circumstances or result and the defendant has "consciously chose[n] not to ask about what he had 'reason to believe' he would discover," *United States* v. *Picciandra,* 788 F.2d 39, 46 (1st Cir. 1986).

Courts should, accordingly, apply the approriate "mix" of subjective and objective standards implied in such a carefully-structured test.

Anti-bribery provision—Exception for "Routine Governmental Action"

House bill. The House bill created a defense for "routine governmental action," which was defined as one "ordinarily and commonly performed" by a foreign official and explicitly including: processing governmental papers, loading and unloading cargoes; scheduling inspections associated with contract performance; and "actions of a similar nature."

Senate amendment. The Senate amendment created an exception for similar action, but included additional explicit categories: obtaining permits, licenses, or "other governmental approvals" to qualify a person to do business in a foreign country; and protecting perishable products or commodities from deterioration. Unlike the House bill, it did not limit actions to those "of a similar nature."

Conference agreement. The House receded to the Senate exception, with an amended definition of "routine governmental action." The conference substitute reflects the intent of the Conferees that the scope of the "routine governmental action" exception apply only to the listed subcategories (i)-(iv) and actions of a similar nature. The Conferees wish to make clear that "ordinarily and commonly performed" actions with respect to permits or licenses would not include those governmental approvals involving an exercise of discretion by a government official where the actions are the functional equivalent of "obtaining or retaining business for or with, or directing business to, any person."

Anti-bribery Provision—Affirmative Defense for "Lawful Payments" v. Defense for Those "Expressly Permitted' in Foreign Country

House bill. The House bill created a defense for payments "expressly permitted under any law or regulation" of the foreign official's country.

Senate amendment. The Senate amendment created an affirmative defense for payments that are "lawful" under the laws and regulations of the foreign official's country.

Conference agreement. The House receded to the Senate, with an amendment to make it an affirmative defense that a payment to a foreign official is "lawful under the *written* laws and regulations of the foreign official's country." (emphasis added) The Conferees wish to make clear that the absence of written laws in a foreign official's country would not by itself be sufficient to satisfy this defense. In interpreting what is "lawful under the written laws and regulations," the Conferees intend that the normal rules of legal construction would apply.

Anti-bribery Provision—Senate Exception for "Reasonable and Bona Fide Expenditures"

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment created new exceptions for "reasonable and bona fide expenditures" incurred by or on behalf of a foreign official. The exceptions included travel and lodging expenses associated with (1) the selling or purchasing or goods or services or with the demonstration or explanation of products; or (2) the performance of a contract with a foreign government or agency.

Conference agreement. The House receded to the Senate, with an amendment making the exception an affirmative defense. The conference substitute makes clear that payment of reasonable and bona fide expenses associated with promotional activities would also be a defense to prosecution, and explicitly includes "execution" of a contract as well as "performance". If a payment or gift is corruptly made, in return for an official act or omission, then it cannot be a bona fide, good-faith payment, and this defense would not be available.

Anti-bribery Provision—Senate Affirmative Defense for "Nominal" Payments

House bill. The House bill contained no comparable provision.

Senate amendment. The Senate amendment created an affirmative defense for any "nominal' payment, gift, offer, or promise of anything of value to a foreign official which constituted a "courtesy, a token of regard or esteem or in return for hospitality" if it is of "reasonable value in the context of the type of transaction involved, local custom, and local business practices."

Conference agreement. The Senate receded to the House.

Anti-bribery Provision—House "Due Diligence" Defense for Vicarious Liability of Firms

House bill. The House bill established a new "safe harbor" defense for civil or criminal liability of issuers and domestic concerns for FCPA violations by their employees or agents. Under current law, under appropriate circumstances, a firm may be held vicariously liable for violations of the FCPA by its employees or agents. Under the House bill, a firm could not be held vicariously liable for such violations if it had established procedures "reasonable expected to prevent and detect" any such violation, and the officer and employee with supervisory responsibility for the offending employee's or agent's conduct used "due diligence" to prevent the violation.

Senate amendment. The Senate amendment contained no provision.

Conference agreement. The House receded to the Senate.

Anti-bribery Provision—Exclusivity of FCPA for Foreign Bribery

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment provided that, except in plea bargain situations, criminal prosecution against any firm or individual for overseas bribery must be pursued exclusively as a violation of the FCPA and not as a violation of the mail or wire fraud laws, where the prosecution is based upon the theory that a foreign official violated a fiduciary duty to or defrauded a foreign government or the citizens of a foreign country. Similarly, no prosecution for conspiracy to violate the mail or wire fraud statute based on that theory would have been permissible.

Conference agreement. The Senate receded to the House.

Anti-bribery Provision—DOJ Civil Injunctive and Subpoena Authority

House bill. The House bill contained no provision.

Senate amendment. The Senate amendment provided civil injunctive and subpoena authority to the Department of Justice with respect to domestic concerns.

Conference agreement. The House receded to the Senate. The Conferees intend that this authority to used by the Department to enhance its ability to enforce the Act.

Anti-bribery Provision—Attorney General Authority to Issue General Guidelines and Advisory Opinions

House bill. The House bill established a procedure under which the Attorney Gener-

al may issue general guidelines describing examples of activities that would or would not conform with the Justice Department's enforcement policy regarding FCPA violations. In addition, the Department must establish procedures to provide opinions in response to specific inquiries from firms concerning conformance of their conduct with the Department's present enforcement policy. The Department must also, to the extent possible, provide timely guidance to exporters and small businesses who are unable to obtain specialized counsel with respect to compliance with the FCPA.

Senate amendment. The Senate amendment contained no provision.

Conference agreement. The Senate receded to the House. The Conferees intend that the Department provide the SEC and other appropriate departments and agencies with copies of the opinions required under new Sections 30A(e) and 104(f).

Anti-bribery Provision—House Repeal of Eckhardt Amendment

House bill. The House repealed the so-called Eckhardt amendment to the FCPA by deleting the lead-in clause of present law, which reads, "whenever an issuer/domestic concern is found to have violated * * *." The deleted language had the effect of providing that employees or agents could not be prosecuted for FCPA violations unless the domestic concern or issuer, whichever the case may be, had been found to have violated the Act.

Senate amendment. The Senate amendment contained no comparable provision.

Conference agreement. The Senate receded to the House.

Anti-bribery Provision—Raising of Fines

House bill. The House bill amended both the FCPA and Section 32(c) of the Exchange Act to raise the maximum criminal fine for a firm or domestic concern from $1 million under present law to $2 million, and for individuals from $10,000 to $100,000 (maximum potential imprisonment for an individual remains at 5 years). The House bill also created a new civil penalty of $10,000.

Senate amendment. The Senate amendment contained no provision.

Conference agreement. The Senate receded to the House. The Conferees intend that the FCPA penalty provisions not operate to override the relevant provisions of P.L. 100-185, the "Criminal Fine Improvements Act of 1987." See 18 U.S.C. 3571.

Anti-bribery Provision—Negotiation of International Agreement

House bill. The House bill included the sense of Congress that the President should pursue the negotiation of an international agreement, "among the largest possible number of countries," to govern acts now prohibited under FCPA. Within one year of enactment of the trade bill, the President must submit to the Congress a report on the progress of the negotiations and those steps which should be taken in the event that the negotiations fail.

Senate amendment. The Senate amendment contained no provision.

Conference agreement. The Senate receded to the House, with an amendment to change the requirement to pursuing an agreement "with the member countries of the Organization of Economic Cooperation and Development (OECD)."

PART II—REVIEW OF CERTAIN MERGERS, ACQUISITIONS AND TAKEOVERS

Sec. 5021. Authority to Review Certain Mergers, Acquisitions and Takeovers

House bill

Section 905 of the House Bill provides that the Secretary of Commerce shall investigate, if requested to do so by an agency head or on the Secretary's own initiative, to determine the effects on national security, essential commerce, and economic welfare of mergers, acquisitions, joint ventures, licensing and takeovers by or with foreign companies which involve U.S. companies engaged in interstate commerce.

The Secretary has 45 days to make a determination regarding his investigation, and if appropriate, to make recommendations to the President for restricting the foreign effort involving the firm engaged in interstate commerce. If the Secretary determines that the foreign control of firms engaged in interstate and foreign commerce would threaten to impair national security and essential commerce, the President must take action he deems appropriate, unless he determines that there is no threat to national security and essential commerce.

Senate amendment

Title XIV of the Senate Amendment is similar to the House provision except: only Executive Departments, the Attorney General and the USTR can request that the Secretary of Commerce initiate an investigation, and the Secretary has the discretion as to whether to initiate the requested investigation; the criteria which is the subject of review is "national security, or essential commerce which relates to national security:" only pertains to mergers, acquisitions and takeovers (not joint ventures and licensing) commenced on or after June 4, 1987; confidentiality of proprietary information is guaranteed; the President has discretion as to whether to act on the Secretary's recommendation for action; and drafted as an amendment to the Defense Production Act.

Conference agreement

The Conference Agreement would allow the President or his designee to investigate mergers, acquisitions or takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. The President must find that there is credible evidence which leads the President to believe that a foreign interest exercising control of a person engaged in interstate commerce in the United States might take action that threatens to impair the national security. Furthermore, the President must find that provisions of law, other than this section and the International Emergency Economic Powers Act, do not provide adequate and appropriate authority. The provisions of subsection (d) state that the findings of the President are not subject to judicial review. This limitation on judicial review applies to this subsection only. Thus, other matters such as the timeliness of the action taken by the Attorney General would be subject to judicial review. The President is authorized to take such action for such time as the President considers appropriate to suspend or prohibit such acquisition, merger, or takeover.

If it is determined that an investigation should be undertaken it shall commence no later than 30 days after the receipt of notice by the President or his designee. The President shall establish through regulation the form and source of notification sufficient to begin this 30 day period. The President's power under this section vests upon enactment and is not contingent upon issuance of implementing regulations. The Conferees expect that the President shall provide parties to transactions with a clearly delineated beginning and ending point to the time during which a transaction would be subject to review. If no investigation is commenced within 30 days of receipt of notice determined by the President to be adequate, the President may not exercise authority under this section. Once an investigation is initiated this subsection provides that it shall be completed within 45 days.

The Conferees intend the term "foreign person" to include any individual who is not a U.S. citizen or a U.S. national under the laws of the United States. The term also includes an entity organized under the laws of, or having its principal place of business in a country other than the United States, provided such entity is directly or indirectly controlled by a foreign person. It would also include any foreign person who, for example, acquires a domestic corporation for the purpose of acquiring control of another domestic corporation in contravention of the purposes of this section.

The Conferees agree that the U.S. "person" that may be acquired could be any of a variety of forms of ongoing or sustainable business entities, including a corporation, a partnership, a division of a corportion, or an unincorporated entity.

The Conferees in no way intend to impose barriers to foreign investment. The Conferees intend for this section to affect only inward foreign investment, i.e., overseas investment flowing into the United States. This section is not intended to authorize investigations on investments that could not result in foreign control of persons engaged in interstate commerce nor to have any effect on transactions which are outside the realm of national security.

The standard of review in this section is "national security". The Conferees recognize that the term "national security" is not a defined term in the Defense Production Act. The term "national security" is intended to be interpreted broadly without limitation to particular industries. The President is authorized to take action under this section with respect to a merger, acquisition or takeover involving a firm in any industry provided that the facts and circumstances warrant the Presidential findings required under this provision.

The legislation gives guidance to the President or his designee regarding factors which may be considered in conducting an investigation, recommending Presidential action, or taking Presidential action under this section. These factors include but are not limited to domestic production needed for projected national defense requirements; the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services; and the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.

The Conferees also recognize the authority of the President under titles I and III of the Defense Production Act has been interpreted broadly in the past. Nothing in this section is meant to imply that past interpretations of the extraordinary breadth of the Defense Production Act or its grant of au-

thority to the President is incorrect. In particular, the authority granted to the President in titles I and III of the Defense Production Act, to require the acceptance and performance of contracts by an entity essential to the defense industrial base (and, as a condition of the contract, to block mergers, acquisitions and takeovers which result in foreign control) is unaffected.

The Conferees also want to clarify that the use of the term "national security" is not meant to imply any limitation on the term "national defense" as used elsewhere in the Defense Production Act. The Conferees note that the term "national defense" has been correctly interpreted in the past to include the provision of a broad range of goods and services, as well as technological innovations and economic stabilization efforts.

The Conferees expect that during the course of an investigation initiated under this section the parties to the transaction and all government agencies with relevant information will cooperate with the investigating authority and that the investigating authority will consult with appropriate officials of the United States government, including the Secretary of Defense.

The President shall announce the decision to take action not later than 15 days after the investigation described in this section is completed. Among the actions available to the President is the ability to suspend a transaction.

The President may also seek appropriate relief in the District Courts of the United States in order to implement and enforce the provisions of this section either in the investigation stage or the Presidential action stage. The term "appropriate relief" is intended as a broad term to give the President the flexibility to deal with any foreign control attempt which the President deems to pose a threat to national security. Such "appropriate relief" includes broad injunctive and equitable relief including, but not limited to divestment relief. The Conferees note that takeover efforts can proceed so quickly that the President needs a broad range of remedies in order to respond appropriately to different facts and circumstances including attempts to subvert the purposes of this section. The term "divestment relief" does not grant the President authority under this section to open transactions concluded prior to the date of enactment of this section. The Conferees intend that the President may seek divestment relief only in those situations where the proposed or pending merger, acquisition or takeover is completed after the President or his designee receives written notification of the transaction and prior to the close of the 15-day period for Presidential action.

This section provides that the regulations implementing this section shall, "to the extent possible, minimize paperwork burdens" and "coordinate reporting requirements under this section with reporting requirements under any other provision of the Federal law." The Conferees intend that duplication and unnecessary cost to both the government and private parties be avoided.

The legislation provides that the powers under this section are in addition to existing law and do not replace, repeal or otherwise prejudice existing law or Presidential power. The Conference do not intend to abrogate existing obligations of the U.S. pursuant to treaties, including Treaties of Friendship, Commerce, and Navigation. The normal rules of statutory construction govern this section.

PROVISIONS NOT INCLUDED IN THE CONFERENCE AGREEMENT

Registration of Foreign Investment

House bill

Section 703 of the House bill requires registration of significant, controlling and major portfolio investment by foreigners. Signifcant investments are defined as a 5% equity interest in a U.S. business that has assets of $5,000,000 or sales of $10,000,000 or an equity interest in real property with a market value of $10,000,000. A controlling interest is defined as a 25% equity interest in a U.S. business that has assets or sales of $20,000,000. A major portfolio interest means any equity interest with a market value of $50,000,000 in a U.S. business.

All three types of interests must register with the Secretary of Commerce. This registration must include:

(1) the identity, address, legal nature, industry and nationality of the foreign person,

(2) the date on which the foreign person acquired the interest,

(3) the relation of the foreign person to the U.S. property,

(4) the name, location and industry of the U.S. property, and

(5) the size of the interest acquired and the price paid.

If the interest is a controlling interest, additional information is required. The foreign investor must file an English translation of any public financial disclosures filed in the home country. For the U.S. business that is being acquired, the foreign investor must file a balance sheet and income statement, location of all U.S. facilities, the identity and nationality of all directors and executive officers, compensation of executives and any related business transactions of any director, along with a description of any significant civil litigation the business has been involved with the past year.

For significant and controlling interests, registration is required within 30 days. For portfolio interests, registration is required 90 days after the end of the calendar year when the interest was acquired. The additional financial information for controlling interests must be filed within 6 months. There are civil penalties for late filing and criminal penalties for failing to file or filing false information.

Within one year of enactment, the Secretary is required to prepare an inventory of the reports filed by registered interests with indexing by name and nationality of foreign investor and by name of the U.S. business. This inventory is to be made available to the public.

Senate amendment

The Senate amendment has no provision.

Conference Agreement

The House recedes to the Senate.

SUBTITLE B—TECHNOLOGY

PART 1. TECHNOLOGY COMPETITIVENESS

Section 5101. Short Title

Present law

No Provision.

House bill

No provision in H.R. 3. (The House position in part 1 is based on H.R. 2160 as passed by the House and on H.R. 2916 as reported by the Committee on Science, Space, and Technology. The short title of H.R. 2916 is the Technology Competitiveness Act.)

Senate amendment

No provision. (However, S. 907 as reported by the Senate Commerce, Science, and Transportation Subcommittee uses the short title Technology Competitiveness Act; S. 907's provisions as reported are identical to the Title XL through XLV of the Senate version of the Trade bill, the Omnibus Trade and Competitiveness Act of 1987 as introduced.)

Conference agreement

Part 1 may be cited as the Technology Competitiveness Act.

Subpart A—National Institute of Standards and Technology

Section 5111. Findings and Purposes

Present law

Section 1 of the National Bureau of Standards Act of March 3, 1901 (NBS Act) (15 U.S.C. 271) changes the name of the Office of Standards and Weights to the National Bureau of Standards (NBS).

House bill

No provision in H.R. 3. (H.R. 2916 presents findings and purposes for a bill to strengthen the NBS Act and the Stevenson-Wydler Act of 1980. It also renames NBS as the National Institute of Standards and Technology.

Senate amendment

Replaces Section 1 of the NBS Act with findings and purposes.

Conference agreement

The Conferees agreed to amend Section 1 of the NBS Act by substituting findings and purposes for the original text. The proposed compromise text accepts most of the findings of the House and Senate versions. The findings emphasize the importance of a strong manufacturing base to a healthy American economy, and the continued importance of precise measurements, calibrations, and quality assurance standards in retaining that base. The Conferees' compromise on purposes combines both House and Senate versions by adding to the House position those elements of the Senate version which were not already included.

This section renames NBS as the National Institute of Standards and Technology (NIST). The Conferees agreed to this new name to reflect not only the enhanced role and responsibility assigned to NBS but also to stress NBS's traditional function of providing the measurements, calibrations and quality assurance standards which are vital to U.S. commerce and constitute the very fundamentals for a vibrant U.S. industrial base. The new name reflects the ultimate goal of NIST, which is to support and enhance the technological competitiveness of the United States.

Section 5112(a). Establishment, Functions and Activities

Present law

Section 2 of the NBS Act authorizes the Secretary of Commerce to undertake specific activities in the development, maintenance, and dissemination of standards and measurements.

House bill

No provision in H.R. 3. (H.R. 2916, Section 5 establishes the functions and activities for science and technology laboratories under the purview of NIST.)

Senate amendment

Identifies the specific responsibilities of the Secretary of Commerce to improve and

expand the functions of National Institute of Technology (the Institute).

Conference agreement

The Conferees agreed to amend Section 2 of the NBS Act by using the Senate language on the establishment of a science, engineering, measurement, and technology laboratory within the Department of Commerce to be known as the NIST. The Conferees accepted the House language in stating the functions and activities of NIST. There was little difference in the provisions stated in both texts. The Senate format, modified to list the functions of NIST as functions of the "Secretary of Commerce acting through the Director and if appropriate, through other officials", is adopted. This will permit the Secretary of Commerce to have the usual prerogatives of his office, including assigning general authorities contained in this section to more than one component of the Department of Commerce, while making sure all activites of NIST are carried out by it. It permits temporary assignments of employees within the Department of Commerce but is not designed to supersede section 5 of the NBS Act which places the NIST Director in charge of all NIST functions. Therefore, the phrase "through other officials", when used here and elsewhere in this Act, is to be construed narrowly and does not permit transfer from NIST of scientific, technical, or administrative functions.

NIST is specifically required to carry out every function now assigned to NBS, including all of its functions as the Nation's national standards and measurement laboratory. The rewording of the statute significantly expands the role of NIST as the government's lead laboratory in support of U.S. industrial quality and competitiveness while retaining and encouraging growth and modernization of the core metrology mission. Of necessity, NIST general authority has been described in very broad language. This is to avoid artificial limitations in the future of NIST activities which are not foreseeable at this time but which are also in the national interest. NIST, on the other hand, must remember that its mission is the promotion of the competitiveness of U.S. industry through standards work and other means. Certain other federal laboratories have major capabilities in support of U.S. competitiveness and as a general rule are the ones best able to promote and to transfer their own technologies to the U.S. private sector.

NIST is expected to be constantly on guard to make sure that its activities do not duplicate or replace those more properly undertaken by the private sector or other government agencies. For instance, the authorities permitting NIST to work with ionizing and non-ionizing radiation and to determine the atomic and molecular structure of matter are largely a restatement of existing authority and are not to be construed as affecting the jurisdiction of other agencies intimately involved in these areas such as the Department of Energy, the Environmental Protection Agency, the National Institutes of Health, and the National Institute of Occupational Safety and Health. The Conferees continue to support the policy statement of the Federal Technology Transfer Act of 1986 that "technology transfer is a responsibility of every laboratory's scientific and engineering professional", that these professionals where feasible should participate "in state, local, and regional technology efforts", and that each agency and federal laboratory accelerate their technology transfer efforts to achieve full compliance with that legislation.

Section 5112(b). Other Functions of Secretary

Present law

No provision.

House bill

No provision.

Senate amendment

Contains two activities associated with telecommunication sciences that are accomplished under the auspices of the National Telecommunications and Information Administration (NTIA).

Conference agreement

The Conferees agreed to move activities 10 and 11 from the Senate bill to a new subsection since they are primarily activities of the NTIA rather than NIST and to codify certain other NTIA functions. Traditionally, the NBS Act has served as the statutory authority for the Department's telecommunications research, and the conferees wished to ensure that NTIA has permanent and unambiguous legal authority to carry out its mission. The inclusion of the telecommunication language in the new statement of mission for NIST is not to be interpreted as a transfer of the work from NTIA to NIST or vice versa.

Section 5112(c). Director of NIST

Present law

Section 5 of the NBS Act describes the process by which the NBS Director is selected as well as overall responsibilities, requirements and compensation of that office.

House bill

No provision in H.R. 3. (H.R. 2916 modifies Section 5 of the NBS Act to specify the appointment process for the NIST Director, the responsibilities of the NIST Director, and the requirements of that office.)

Senate amendment

No provision.

Conference agreement

The Conferences agreed to accept the House provision amending Section 5 of the NBS Act related to the appointment and duties of the NIST Director after striking archaic language carried forward from the Act. In order to assure a smooth transition, the current NBS Director is designated as the NIST Director until the NIST Director is installed in office. This section makes clear that NIST, like NBS before it, is to be run as a discrete entity with general supervisory powers in the NIST Director. Nothing in this Act is to be construed as giving the Department of Commerce the authority to transfer control of portions of NIST to officers other than the NIST Director. The NIST Director is compensated at ES Level IV.

Section 5112(d). Organization Plan

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2916 requires the Director to submit an organization plan for NIST not later than 120 days after enactment of this Act, and at least 60 days prior to the effective date of the plan.)

Senate amendment

No provision.

Conference agreement

The Conferees agreed to the House provision requiring an organization plan for NIST to be submitted to its Congressional authorizing committees at least 60 days before the plan's effective date and 120 days after enactment of this legislation. The organization plan is to establish the major operating units of NIST and to distribute the activities and functions listed in the new section 2(c) of the NBS Act. The NIST Director may revise the organization plan after a formal 60-day notification of Congress. The Conferees further agreed that the organization of NIST will follow that of NBS until the effective date of the organization plan. The Conferees mandated that the Center for Fire Research and the Center for Building Technology must continue in their current forms under this plan.

Section 5113. Repeal of Provisions

Present law

The first sections of the Acts of July 16, 1914, March 4, 1913, and May 14, 1930.

House bill

No provision in H.R. 3. (H.R. 2916 repeals the first section of the Act of July 16, 1914, the first section of the Act of March 4, 1913, and the first section of Act of May 14, 1930.)

Senate amendment

Same provisions as in H.R. 2916.

Conference agreement

This section was identical in both the House and Senate bills and merely repeals archaic language or provisions of the original NBS Act that no longer apply.

Section 5114. Reports to Congress; Studies by the National Research Council

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2160 amends the NBS Organic Act by adding one new section which requires the NIST Director to inform Congress of all activities, and also requires the NIST Director to justify all changes in fees.)

Senate amendment

Establishes two new sections in the NBS Act which require the Institute's Director to inform Congress of all activities and to justify changes in fee policy, and specifies that the Director has the authority to contract with the National Academy of Engineering and the National Academy of Sciences (Academies).

Conference agreement

The Conferees agreed to accept the Senate language and amend the NBS Act by adding two new sections. The new section 23 requires the NIST Director to keep the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with regard to all activities of NIST and requires the NIST Director to justify to the Congress in advance and in writing all changes in policies regarding fees for NIST services to industry. Section 24, Studies By The National Research Council, makes it clear that this NIST Director has the authority periodically to contract with the Council for advice and studies.

Section 5115. Technical Amendments

Present law

No provison.

House bill

No provision in H.R. 3. (H.R. 2916 specifies that all laws referencing NBS shall now be deemed to refer to NIST.)

Senate amendment

Amenmds the NBS Act by modifying all references to "NBS" and "Bureau", and substituting "NIT" and "Institute".

Conference agreement

This section was rewritten to include the substance of both the House and Senate provisions reflecting the redesignation of NBS as NIST. The technical amendments which make up section 4504 of the Senate bill are moved to this section. The technical amendments make sure that references in any other Federal law to NBS shall be deemed to refer to NIST.

Subpart B—Technology Extension Activities and Clearinghouse on State and Local Initiatives

Section 5121(a). Technical Centers and Technical Assistance

Present law

No provision.

House bill

No provision.

Senate amendment

Provides for establishing Regional Centers for the Transfer of Manufacturing Technology (Regional Centers) beginning with four centers in 1988, four in 1989, and four in 1990. The Commerce Department would provide up to 50 percent of total costs, with all federal contributions ended after six years.

Conference agreement

The Conferees agreed to a modified version of the Senate provision establishing the Regional Centers set forth in a new Section 25. The Senate proposal would have established Regional Centers in each of the fiscal years 1988 through 1990. Regional Centers are to provide outlets for the demonstration of technology developed by NIST to small- and medium-sized firms, beginning with the technology developed at the Automated Manufacturing Research Facility of NIST. By using the term "regional", the Conferees do not mean to preclude larger states, such as Texas or Alaska, from applying as a region coterminous with their state boundaries or to preclude parts of states from being included in more than one Regional Center. Under the Senate proposal the Secretary of Commerce would contribute up to 50 percent of the costs of each Regional center for up to six years. The Conferees agreed to a more modest start for the program, an authorization of $5.0 million which should permit the start of two to three Regional Centers during fiscal year 1988. The authorizations which the Senate recommended for fiscal years 1989 and 1990 of $32 million and $40 million, respectively, are reduced to $40 million total and lumped together in one total since the conferees could not predict how fast the program would expand. Planning grants are not required, but may be awarded on a competitive basis from funds available for the Regional Center program if such grants are needed to guarantee high quality applicants from each of the various regions of the United States.

The Conferees also require the Secretary of Commerce to publish for comment, in the Federal Register, in advance of the establishment of any Regional Centers under this section, a detailed description of plans for administering the Regional Center program. The description is to include criteria and procedures for selecting Regional Center applicants, the role these Regional Centers are to play in promoting the use of improved manufacturing techniques by American small- and medium-sized businesses, projected schedules for reduction of direct financial support of the Regional Centers by the NIST, and preliminary criteria for evaluation of the effectiveness of Regional Centers. Initial publication is to be followed by a 30-day comment period, which recognizes the pressing need for such Regional Centers to be established and functioning in the near future. The Conferees also have limited potential grantees under this section to U.S. based, non-profit institutions, and the companies they assist, and to U.S. based, small- and medium-sized manufacturers who intend to apply the technology at facilities in the United States. Such organizations, including universities, which are already active in the enhancement of manufacturing capabilities of American businesses or which engage in related activities, are encouraged to apply. The Conferees kept the Senate requirement of merit review of applications by qualified individuals outside the Department of Commerce as part of the process in the belief that such review will increase the quality of fairness of the program. The Regional Center program is a new program within the Department of Commerce, which is not designed in any way to limit previously established programs, such as the Engineering Research Centers, of the National Science Foundation (NSF), which have a different purpose, or programs authorized or established by the Stevenson-Wydler Act as amended. Regional Centers may accept gifts and loans of equipment from vendors and others for these purposes. Individual pieces of equipment may be loaned to small firms for up to six months, but equipment essential to the operation of the Regional Centers shall not be loaned. The Conferees feel that a loan program may be the most effective means of technology transfer to small manufacturers who are not close enough geographically to a Regional Center to spend time experimenting with the equipment on exhibit.

Section 5121(b). Technology Extension Services

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2916 requires the Secretary of Commerce to review current state industrial extension programs and determine an appropriate federal role in encouraging such programs.)

Senate amendment

Establishes an Office of Extension Services within the Institute to serve as a point of contact for state and local governments and to administer the Regional Centers.

Conference agreement

The Conferees accepted a compromise version for establishing a technology extension program. The Conferees retained the House provision requiring the Secretary of Commerce to conduct a nationwide study of existing state technology extension services and their relation to the Federal Government. The Secretary of Commerce must submit the results of this study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee of Science, Space, and Technology of the House or Representatives with the NIST organization plan. The Conferees intend that funding for this study come from the Commerce Secretary's budget. The study can be conducted in-house or can be contracted out and should be coordinated with the Clearinghouse established in Section 5122(a). The NIST Director and the Secretary of Commerce should use the study to help develop the implementation plan also required by this section. The implementation plan should describe how NIST will provide assistance to state technology programs. Such assistance may include, but is not limited to technical information and advice from NIST, workshops and seminars consistent with the intent and authorities provided to NIST under the Federal Technology Transfer Act of 1986. The implementation plan also should include details for the three-year program for cooperative agreements between NIST and state technology extension services. The program is authorized for $2 million in each of fiscal years 1989, 1990 and 1991, as in the Senate bill, with an explicit sunset provision which is effective on September 30, 1991. The cooperative agreements may be for one, two or three years, as NIST deems appropriate, and will be awarded on a competitive basis. States must match the federal contribution with at least an equal increase in their own spending on extension. These agreements may be used to expand the reach of the Regional Centers established under Section 5121(a) to other states.

While the Office of Extension Services was eliminated, the functions of this office are retained as amendments to the NBS Act. This was done to give NIST more discretion in deciding how to organize these functions. The primary function is the provision of technical information and advice to state technology extension services by NIST personnel. The functions or cooperative agreements are to complement and not to limit the authorities provided to federal agencies under the Federal Technology Transfer Act of 1986, which gives technology transfer responsibilites to the federal laboratories, the Federal Laboratory Consortium for Technology Transfer (FLC) and the National Technical Information Service (NTIS). Furthermore, the conferees note that cooperative agreements established under this section are distinct from "cooperative research and development agreements" under the Federal Technology Transfer Act of 1986. The Conferees reiterate that technology transfer and the management and development of ideas typically are carried out on a person-to-person basis at the originating laboratory. As appropriate, NIST may coordinate the activities with these organizations.

The technical assistance NIST provides to state extension services should remain consistent with NIST's program strengths. NIST should coordinate its extension programs with the FLC and other federal agencies and/or labs to avoid duplication and to provide as much information as possible.

Section 5121(c). Federal Technology Transfer Act of 1986

Present law

Federal Technology Transfer Act of 1986.

House bill

No provision.

Senate amendment

No Provision.

Conference agreement

This section mandates that nothing in the provisions establishing the Regional Centers or giving NIST authority to assist state technology program shall be construed as superseding the provisions of the Federal Technology Transfer Act of 1986.

Section 5121(d). Non-Energy Inventions Program

Present law

The Federal Non-Nuclear Energy Research and Development Act of 1974 created an Energy-Related Inventions Program within NBS which has been highly successful in evaluating inventions and enabling those which show merit to obtain financing more readily.

House bill

No provision in H.R. 3. (H.R. 2916 requires the Secretary of Commerce to submit a plan to supplement the existing Energy-Related Inventions Program with the capability to evaluate inventions which are not energy related.)

Senate amendment

No provision.

Conference agreement

The Conferees agreed to a modified version of the House provision establishing within the Institute a Non-Energy Inventions Program to complement but not replace the existing Energy-Related Inventions Program. The original House version required a study of the expansion of this program. Under the conference version, the NIST Director is required to submit, along with the initial organization plan for the Institute, an initial implementation plan including specific cost estimates, implementation schedules, and proposed mechanisms to help finance the development of technologies deemed to have potential. The NIST Director is required to consult with appropriate federal agencies including the Small Business Administration and the Department of Energy, State and local governments, universities, and private sector organizations and to set up cooperative arrangements, as appropriate, for various phases of the Inventions Program including both the referral of inventors to the program and aid to those inventors deemed to have concepts with commercial potential. While authorization of appropriations is not increased for fiscal year 1988, the conferees expect NIST and other organizations' shares in the cost of the program, including financial assistance to inventors, to be described in the program plan required by this Act.

Section 5122. Clearinghouse for State and Local Initiatives

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2916 provides for a clearinghouse within the Office of Productivity, Technology, and Innovation (OPTI) that serves as a central repository of competitiveness initiatives by state and local governments.)

Senate amendment

Provides for a Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation (Clearinghouse) within the Office of the Secretary of Commerce.

Conference agreement

The Conferees decided that the Clearinghouse should be limited in scope and concentrate on collection and dissemination of information on federal, state, and local initiatives related to promotion of technological innovation. The Conferees agreed to use the Senate format but to establish the Clearinghouse in the OPTI, as in the House bill. The responsibilities section is discretionary, as in the House bill. The Clearinghouse may collect and disseminate information on state and local initiatives, and is authorized to develop methodologies which state and local governments can use to evaluate their own programs. The Clearinghouse may provide technical assistance and advice to such governments with respect to such initiatives. The contracts section of the Senate version is modified to delete reference to evaluations of state programs. The Conferees modified the House version of the reporting requirement by requiring triennial reports, beginning by January 1, 1989, and including recommendations to the President, the Congress, and to federal agencies on the appropriate federal role in stimulating state and local efforts in this area. Also, the definition of "Clearinghouse" provided in the House version was included.

The Conferees are mindful that certain private sector companies have done extensive work on gathering, analyzing and disseminating information regarding federal, state, and local programs that provide technical assistance to industry. The Clearinghouse, given its limited resources, is not intended to duplicate these efforts or to compete with these companies. The Clearinghouse is encouraged whenever possible to take advantage of the work and capabilities already established in the private sector and to accomplish its mission through contract whenever this is possible and appropriate. The establishment of the Clearinghouse also is not intended to limit the efforts of NIST, NTIS, or other parts of the Department of Commerce. It shall remain the responsibility of the Secretary of Commerce to make sure that the programs of the Clearinghouse are not duplicative of the efforts of other Departmental components and that proper coordination and cooperation takes place among the various Departmental components which are working to enhance United States industrial competitiveness. The federal laboratories referred to in this and other sections of the bill include both government-operated and contractor-operated laboratories as defined in the Federal Technology Transfer Act of 1986.

Subpart C—Advanced Technology Program

Section 5131(a). Advanced Technology Program

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2916 establishes an Advanced Technology Foundation (ATF), under the NIST Director, to promote development of advanced and innovative manufacturing technologies and to provide assistance aimed at solving generic research problems. It specifies responsibilities of the ATF Director and requires Congressional reporting.)

Senate amendment

Establishes an Advanced Technology Program (ATP) under the Institute Director which shall assist United States industry to create generic technology for commercialization and manufacturing. Provisions of the ATP are explained, along with the policy regarding funding and accounting.

Conference agreement

The Conferees agreed to amend the NBS Act to add a new Section 28 establishing an ATP to serve as a focal point for cooperation between the public and private sectors in the development of industrial technology and to encourage business to use the research, research techniques and know-how developed in the program of NIST. This section was rewritten to include the substance of both the House and Senate provisions setting forth the activities authorized under the ATP. Its main purpose is to aid in solving generic problems of concern to large segments of an industry rather than to promote individual companies. A primary activity of the ATP is to encourage American companies to form joint research and development ventures as defined by the National Cooperative Research Act of 1984, provided that such joint ventures are not under the effective control of a single company. The ATP can help these ventures to form by providing organizational and technical advice; by sponsoring workshops, seminars, and conferences; and by using other means of providing information to businesses interested in forming or joining joint research and development ventures. The ATP is also permitted to contribute limited start-up funding, if appropriate, and a minority share of the ongoing costs of projects of these consortia for a period of up to five years when it is in the national interest to do so and when an appropriate cost-sharing agreement setting forth the rights and responsibilities of all parties including NIST has been developed. The Secretary of Commerce also may delegate to the program any additional responsibilities he has regarding consortia whether he has these responsibilities in his capacity as Secretary or a member of an interagency group. The ATP is to look for ways to tap the enormous talents of the National Laboratories for these purposes.

The Conferees expect the ATP to implement procedures to make sure that its programs are geared to solving problems of significance to the private sector. The Department of Commerce is authorized to take all actions necessary and appropriate to establish and operate the ATP. These include: supervising the programs, revising the program through the annual budget process and making revisions to the NIST Organization Plan, monitoring program results, giving due consideration to the advice of the Visiting Committee on Advanced Technology, assuring the undue advantage is not given to specific companies, and providing for dissemination of the ATP's research results. The Conferees accepted the "Limitations" section of the Senate bill with only minor modifications which, among other things, provides that if an awardee fails, the unspent balance of the federal funds shall be returned to the ATP. Principles and conditions governing the awarding of financial assistance by the ATP shall be set out in the Federal Register, and applications for assistance shall be accepted only after publication of the final Federal Register notice. Awards shall be made only after completion of a merit review of the quality of the successful proposals. Examples of factors to be considered in such reviews are willingness to commit quality personnel and other resources, the reasonableness of cost estimates and project schedules, the prior experience of NIST with the applicant, the extent of small business participation, potential benefits to the company and to the economy, and the likelihood of the applicant aggressively pursuing those benefits.

Section 5131(b). Visiting Committee on Advanced Technology

Present law

Section 10 of the NBS Act authorizes a Visiting Committee of five members and

provides a description of the Committee's responsibilities and jurisdiction.

House bill

No provision in H.R. 3. (H.R. 2916 amends section 10 of the NBS Act to create an Advanced Technology Board consisting of nine members, with at least five from United States industry. This provision describes the appointment process of the board, its responsibilities, and its jursidiction.)

Senate amendment

No provision.

Conference agreement

The Conferees agreed to amend the NBS Act to replace the present NBS Visiting Committee with a Visiting Committee on Advanced Technology (VCAT), with majority representation from U.S. industry, as the statutory advisory committee for NIST. VCAT will consist of nine members appointed by the NIST Director, five of whom shall be from United States industry. Original VCAT members will be divided into three classes serving from one, two or three years. Successor members will serve for terms of three years. The Conferees agreed that the final members of the NBS Visiting Committee shall be among the initial members of VCAT, to the extent they wish to serve. The VCAT is larger than the Visiting Committee in order to widen the breadth of expertise and advice available to NIST. VCAT is not intended to be a policy board which orders the NIST Director to adopt specific policies; rather it is expected to provide the best available advice for the NIST Director to use in making his own decisions. To emphasis this, the Conferees altered the House bill to change the name of this organization from Advanced Technology Board to VCAT and to make its members appointees of the NIST Director rather than the President. The Conferees agreed that majority representation from U.S. industry is important to ensure that the policies of VCAT reflect the best thinking and market sense of the industries that will utilize the technologies and processes that will be made available through the ATP. Even though the VCAT is purely advisory in nature, the Conferees have included a conflict of interest provision because of the financial impacts NIST's decisions can have on an individual's or a company's financial interests. VCAT is directed to submit an annual report to the Secretary of Commerce for submission to the Congress on or before January 31 in each year to cover those matters which affect NIST, including the ATP, and such additional reports on specific policy matters it deems appropriate.

Section 5131(c). National Academies of Science and Engineering Study of Government-Industry Cooperation in Civilian Technology

Present law

No provision.

House bill

No Provision.

Senate amendment

Specifies that the Director may contract periodically with the Academies to receive advice and studies on the nation's significant national needs and opportunities in manufacturing and emerging technologies. The bill specifies the responsibilities of the review panel of the Academies.

Conference agreement

The Conferees agreed to accept the Senate proposal authorizing the Secretary of Commerce to contract with the Academies, including the Institute of Medicine, for a review of the various types of arrangements under which the private sector in the United States and the Federal Government cooperate in civilian research and technology and technology transfer. Panelists are to be drawn from a broad spectrum of backgrounds and the Academies should also draw on the expertise of its Board of Assessments for NIST. The purpose of the review is to provide the Secretary of Commerce and the Congress with objective information regarding the uses of the various types of cooperative technology arrangements currently being applied in the United States, as well as a candid assessment of which of these arrangements work well and what conditions are necessary for them to work. The Conferees note that there have been a sizeable number of programs set up legislatively and administratively over the past decade and feel that there should be enough experience from the initial experiments under these programs for the Academies to reach some conclusions regarding effectiveness and to make recommendations for improvement. The Conferees feel that this study will help guide the government properly to invest in the most promising of these alternatives. The proposal supersedes studies by the Academies under the Semiconductor and Superconductor Research section of the Technology Reviews in Title XLIII of the Senate bill. The Secretary of Commerce is to seek funding for this review from other federal agencies and private industry. A report is to be submitted to the Secretary of Commerce, the President, and the Congress within eighteen months after the contracts are signed with the Academies.

Subpart D—Technology Reviews

Section 5141. Report of President

Present law

No provision.

House bill

No provision.

Senate amendment

Requires the President, when submitting his fiscal year 1990 budget to Congress to also submit a report on administration policy and proposals in semiconductors, semiconductor manufacturing, fiber optics and superconductors.

Conference agreement

The Conferees agreed to accept the Senate language requiring the President to submit a report on policies and budget proposals regarding federal research in semiconductors, superconductors, fiber optics and optical-electronic technologies, and advanced manufacturing technologies at the time of submission of the budget request for fiscal year 1990 to Congress. The Conferees agreed that, since federal research efforts are generally dispersed throughout a wide range of agencies, and budget information is often difficult to obtain, a report accompanying the fiscal year 1990 budget request would be particularly timely.

Section 5142. Semiconductor Research and Development

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2916 creates the National Advisory Committee on Semiconductors (NACOS) with the responsibility for devicing a national semiconductor strategy to assure continued U.S. leadership in semiconductor technology.)

Senate amendment

Directs the Secretary of Commerce to enter into an agreement with the National Academies of Science and Engineering to review all major policy issues regarding United States Semiconductor Technology.

Conference agreement

The Conferees agreed to accept the House language which established NACOS to minitor the semiconductor industry and recommend a national strategy to ensure U.S. competitiveness in the semiconductor industry. This section creates a thirteen-member independent advisory body in the Executive Branch consisting of the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, Director of the NSF, or their designees. The President, acting through the Director of the Office of Science and Technology Policy (OSTP), is to appoint four members from outside the Federal Government who are eminent in the semiconductor industry, and four members who are eminent in the fields of technology, defense, and economic development. OSTP is authorized to seek administrative support and funding for NACOS from an appropriate agency or agencies. Accepting funds for this purpose from private sector companies or organizations is also permissible. Annual reports are required to be submitted to the President and the Congress on the NACOS's activities. NACOS shall cooperate with any other committee or commission established by law which has overlapping responsibilities.

Section 5143. Review of Research and Development Priorities in Superconductors

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2916 requires the President to appoint a National Commission on Superconductivity (National Commission) to review major policy issues regarding U.S. applications of recent research advances in superconductors to assist Congress in devising a national strategy in superconductivity technologies. Bill specifies the make-up and responsibilities of National Commission Members.)

Senate amendment

Directs the Secretary of Commerce to enter into an agreement with the Academies to review all major policy issues regarding superconductivity technology.

Conference agreement

The Conferees agreed to accept the House language which requires the President to appoint a National Commission to review major policy issues related to superconductor research. The National Commission is to include representatives from various agencies of the Federal Government, industries, universities, national laboratories, and professional societies. The National Critical Materials Council is to be the coordinating body and provide staff support for the National Commission. A representative of the private sector is to be designated Chairman of the National Commission. A report, including recommendations, is required to be submitted to the President and the Congress within six months after enactment of the bill, regarding methods of enhancing the research, development, and implementation of improved superconductor technologies in all major applications. The National Commission is to terminate one year after establishment with all residual functions

vesting in the National Critical Materials Council.

Subpart E—Authorization of Appropriations

Section 5151. Authorization of Appropriations for Technological Activities

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2160 authorizes appropriations for fiscal year 1988 of $142,977,000 for NBS. H.R. 2916 authorizes $5 million for the ATF.)

Senate amendment

Authorizes total appropriations of $206.9 million for fiscal year 1988 including $166,000,000 for the Institute's ongoing programs and $15,000,000 for ATP.

Conference agreement

The Conferees established $144,783,000 for fiscal year 1988 as the base authorization level for the traditional activities to be carried out by NIST. These are: Measurement Research and Technology, $41,939,000; Engineering Measurements and Manufacturing, $40,287,000; Materials Science and Engineering, $23,521,000; Computer Science and Technology, $7,941,000; Research Support Activities, $19,595,000; Cold Neutron Source Facility, $6,500,000 (for a total authorization of $13,000,000), and $5,000,000 was authorized for the new programs of the National Institutes. Of these totals $2,000,000 would be only for steel technology; $3,550,000 for process and quality control research; $3,710,000 for the Center for Building Technology; $5,662,000 for the Center for Fire Research (with the stipulation that the two Centers shall not be merged); $1,500,000 for high performance composites research; $7,371,000 for technical competence fund projects; and $1,091,000 for Postdoctoral Research Associates. The authorization levels also assume full funding of the $4 million initiative for characterization and processing of high temperature superconducting materials and $5.0 million for sections 25, 26, and 27 of the NBS Act. The Conferees did not attempt to set authorization levels related to the Computer Security Act or other matters which may be included in supplemental appropriations acts for 1988.

Section 5152. Stevenson-Wydler Act Authorizations

Present law

No provision.

House bill

No provision in H.R. 3. (H.R. 2160 authorizes $2,400,000 for OPTI, $1,000,000 for Japanese Technical Literature Program, and $500,000 for NTIS patent licensing activities. H.R. 2916 authorizes appropriations of $500,000 for fiscal year 1988, $1,000,000 for fiscal year 1989, and $1,500,000 for fiscal year 1990 for the Clearinghouse.)

Senate amendment

Authorizes appropriations of $2,400,000 for OPTI, $2,000,000 for the Japanese Technical Literature Program, and $500,000 for NTIS patent licensing activities. Clearinghouse authorization levels are $1,000,000 for fiscal year 1988, $1,500,000 for fiscal year 1989, and $2,000,000 for fiscal year 1990.

Conference agreement

The Conferees agreed to amend the Stevenson-Wydler Technology Act of 1980 to authorize $2,400,000 for OPTI, and $500,000 for the patent licensing activities of NTIS, and $500,000 for the Japanese Technical Literature Program. They agreed to accept the proposed House figures for the Clearinghouse of $500,000 for fiscal year 1988, $1,000,000 for fiscal year 1989, and $1,500,000 for fiscal year 1990.

Subpart F. Miscellaneous Technology and Commerce Provisions

Section 5161. Savings Provision

Present law

No provision.

House bill

No provision.

Senate amendment

Amends the NBS Act to continue existing NBS rules and regulations following enactment of this bill.

Conference agreement

The Conferees agreed to accept the Senate provision amending the NBS Act to include a new section which continues existing NBS rules and regulations, determinations, standards, contracts, certifications, authorizations, delegations, and other actions not suspended by the Secretary of Commerce or others.

Section 5162. Miscellaneous Amendments to the Stevenson-Wydler Act

Present law

Section 13(a)(4) of the Stevenson-Wydler Act permits the NTIS to continue its program of licensing the inventions of interested agencies. Section 10(e)(7)(A) of the Stevenson-Wydler Act provides stable funding for the Federal Laboratory Consortium by setting aside for it .005 percent of the research budget of each federal agency with a significant research budget.

House bill

No provision in H.R. 3. (H.R. 2916 modifies Section 13(a)(4) of the Stevenson-Wydler Act to make clear that royalties acquired from one invention can be applied against other inventions of the same agency. H.R. 2916 also raises the FLC setaside to provide it a budget of approximately $1,000,000 in 1989, the dollar amount the provision's sponsors originally intended to be available to the FLC.)

Senate amendment

No provision.

Conference agreement

The Conferees accepted two of the House miscellaneous and conforming provisions in Title VII of H.R. 2916. Section 5162(a) rewords Section 14(a)(4) of the Stevenson-Wydler Technology Innovation Act of 1980, dealing with the licensing of inventions, to enable the patent licensing program of the National Technical Information Service to receive promptly, from the agencies contracting with it, the revenues it needs to continue its traditional program of providing worldwide patent licensing services to other government agencies. Section 5162(b) redrafts Section 11(e)(7)(A) of the 1980 Act concerning the FLC to restate that organization's funding formula to ensure that the $900,000 to $1,000,000 per year the Congress originally intended for the FLC's responsibilities under the 1986 Act is available. The portion of an agency's R&D budget that must go to the FLC is increased from .005 percent to .008 percent. NIST is expected to continue the current practice of estimating each contributing agency's share of FLC funding and the Conferees hope agreement between NIST and the agencies can be reached promptly during the first quarter of the fiscal year. When this does not occur, NIST should bill an agency based on that agency's intramural research and development obligation total from the most recent edition of the National Science Foundation Publication, *Federal Funds for Research and Development* to the extent this figure accurately reflects the obligation. The Committee notes that NSF totals are incomplete for certain agencies such as the Department of Energy because of that agency's use of government-owned contractor-operated facilities for the bulk of that agency's intramural research program. It is expected that FLC's funding will be received by the end of the first quarter of each fiscal year.

Section 5163. Fee Policy

Present law

No statutory provision forbidding NIST from charging fees of research associates; no requirement for the Board of Assessment at NIST to review emerging technologies.

Provisions in the organic charter of the Department of Commerce authorize the NTIS and require its clearinghouse functions to be maintained by the Department of Commerce.

House bill

No provision in H.R. 3. (H.R. 2160 forbids NIST from charging fees from research associates, requires NIST to prepare a plan describing how the Institute will make small businesses aware of its activities and research, and forbids contracting out the activities of NTIS.)

Senate amendment

Almost identical language to the House bill.

Conference agreement

The Conferees accepted the Senate format and language of Section 4505(b) (c) (d) and (e), (sections 13, 14, 15, and 16 of H.R. 2160, the NBS fiscal year 1988 Authorization Bill as passed by the House on June 4, 1987.) The language is almost identical in both the House and Senate versions. As agreed to by the Conferees, the sections include the following. NIST is not to charge fees to research associates in the absence of express statutory authority to do so. NIST's Board of Assessment must include as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology. The Institute must submit a plan to the authorizing Committees in the House and Senate detailing how the institute will make small businesses more aware of NIST activities in order to increase their participation in NIST research; this plan is not meant to be an administrative burden and may be submitted in conjunction with the NIST Organization Plan required by this Act.

The Stevenson-Wydler Act is amended to forbid contracting out of activities or functions of the National Technical Information Service, not performed by contractors on September 30, 1987, without specific statutory authority. The only exception permits NTIS to let small contracts of limited duration not in excess of $250,000 per year to supplement the activities of the NTIS government employees. NTIS is required to maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical, and engineering information since NTIS is often the easiest place to find older federal scientific documents; this requirement merely codifies current NTIS practice and is not to affect NTIS responsibilities, vis-a-vis the National Archives, under 44 U.S.C. 2107.

A Commerce, Science, and Technology Fellowship Program by which Department employees have an opportunity to spend a one-year fellowship working in Congressional offices is reestablished. Although the program traditionally was administered by the NBS, this provision requires the Secretary of Commerce to formally establish a program and to report to the Congress within six months after the enactment date of this Act. One final House provision, which would have required OPTI to analyze the concept of competitiveness impact reviews was omitted because the concept is being incorporated elsewhere in this Act.

Section 5164. Metric Usage

Present law

The Metric Conversion Act of 1975 establishes the U.S. Metric Board and requires it to coordinate the voluntary conversion of the U.S. to the metric system.

House bill

No provision in H.R. 3. (H.R. 2916 amends Section 3 of the Metric Conversion Act of 1975 to require each federal agency to use the metric system in procurements, grants, and other business-related activities by the end of fiscal year 1992 to the maximum extent feasible.)

Senate amendment

Requires the Federal Government to reaffirm the national policy set forth in the Metric Conversion Act of 1975 and to initiate specific programs to speed conversion to metric.

Conference agreement

The Conferees accepted the House version of the amendments to the Metric Conversion Act of 1975. While both the House and Senate provisions endorsed the initiation of specific programs to increase U.S. conversion to the metric system, the conferees chose to accept the greater specificity of the House provision. The International System of Units (SI) version of metric, as established by the General Conference on Weights and Measures in 1960 and as interpreted or modified by the Secretary of Commerce, is designated as the preferred system of weights and measures for United States trade and commerce, and its use by each federal agency is required in procurements, grants, and other business-related activities. Each agency is expected to establish guidelines similar to Department of Defense (DOD) Directive Number 4120.18, dated September 16, 1987 as soon as possible following the date of enactment. This directive states that it is DOD policy to use metric system in all its activities consistent with security, operational, economical, technical, logistical, and safety requirements. It then more specifically spells out when metric is to be used; who is to establish procedures for preparation, coordination and approval of new metric specifications and standards; and the DOD officials who must approve exceptions to use of metric. DOD representatives, furthermore, are directed by the DOD Directive to participate actively in the development of U.S. and international standards using the metric system and in the Federal Interagency Committee on Metric Policy which will have major responsibilities in ensuring the successful implementation of this section. The Conferees expect each of these issues to be addressed in the guidelines to be promulgated by each agency and the Interagency Committee is to be used to achieve as much consistency as possible in the guidelines of the various agencies.

Under the provision adopted by the Conferees, conversion to metric is not required when its use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. Such exceptions will be more likely to occur in the early years of this program. For instance, the DOD directive states that existing designs dimensioned in inch-pound units need not be converted unless it is necessary or advantageous to do so, that the measurement units in which a system is originally designed are to be retained for the life of the system, and that during the transition, use of hybrid metric and inch-pound designs may be necessary. Also, certain aerospace systems generally use the English system of measurements worldwide. It is not the intent of this legislation to force the U.S. aerospace industry, to its financial detriment, to take the lead in metric conversion for these systems. However, new DOD shop, laboratory, and general purpose laboratory equipment under the DOD directive must be able to operate in metric units; bulk purchases usually are to be made in metric; and components, subassemblies, and semifabricated materials are to be specified in metric units when economcially available and technically adequate. Furthermore, the Conferees expect agencies to assist domestic federal contractors and subcontractors, including small business, in developing the capability to compete in metric units so that increased use of metric by federal agencies does not become a windfall for companies from foreign countries which have already converted. The ability of federal contractors and suppliers to do business in metric should increase U.S. access to foreign markets and decrease our trade deficit since metric literacy is a prerequisite to competing in most overseas markets.

PART II. SYMMETRICAL ACCESS TO TECHNOLOGICAL RESEARCH

(No provision in House bill; Sections 411, 412 and 3871 of the Senate Amendment)

Present law

Title V of P.L. 95-426 (The Foreign Relations Authorization Act, Fiscal Year 1979) sets forth the goals of United States international science and technology policy, requires the President to issue an annual report on the conduct of such policy, and establishes the Secretary of State's responsibility for coordinating and overseeing all major international science and technology agreements.

House bill

No provision.

Senate Amendment

Sections 411 and 412 of the Senate Amendment set up a system of continuous monitoring technology transfer between the United States and foreign countries and call for an annual report by the U.S. Trade Representative to be prepared in conjunction with the National Science Foundation.

Section 3871 of the Senate Amendment creates an Interagency Committee on Symmetrical Access to Technological Research, chaired by the Secretary of Commerce, to assess the availability of equally valued technological knowledge across countries and to make such availability a goal in U.S. trade negotiations. The Committee is charged with studying the general concept of symmetrical access and producing annual reports to Congress and setting negotiating objectives for the United States Trade Representative insofar as his negotiations involve international science and technology issues, including recommending administrative and legislative changes in United States policy to improve symmetrical access to technological research.

Conference agreement

United States science and technology policy has traditionally encouraged international access to this nation's public research and development activities and opportunities. The Conference Agreement is an attempt to encourage other countries to follow the United States example.

Current law (the Stevenson-Wydler Technology Innovation Act of 1980) and Executive Order (number 12591, issued in April 1987) set the precedent for this section of the Conference Agreement. Both direct federal laboratories and agencies, in international science and technology negotiations, to consider whether the home countries of foreigners who apply for access to U.S. research and development facilities, offer comparable terms to U.S. nationals.

The Conference Agreement makes several amendments to Title V of P.L. 95-426 (22 U.S.C. 2656) to ensure that science and technology agreement involving the United States open up foreign research and development activities and opportunities for Americans. The amendments build on existing goals of U.S. international science and technology policy, provide for more information on the United States access to foreign research and development activities and opportunities, and establish a process to review proposed U.S. international science and technology agreements.

Section 5171(a) of the Conference Agreement adds to the declaration of policy in Title V. It states that U.S. federally supported international science and technology agreements should be negotiated to assure proper protection of intellectual property rights to the maximum extent possible and reciprocal and equitable access to foreign scientific and technological opportunities, facilities, and information. The conferees recognize that strict reciprocity may not be a proper measure for ensuring the optimal amount of access inasmuch as the structure and organization of the U.S. scientific and technological enterprise may not mirror that of other nations. For this reason, the conferees encourage policy makers to evaluate the equity and reciprocity of the overall science and technology relationship when measuring and ensuring such access.

Sections 5171 (b) and (c) direct the President to include information in the annual report mandated by Title V on American access to public and publicly supported private international research and development activities and opportunities. These sections of the annual report are to be transmitted to the Speaker of the House of Representatives and the Senate Committees on Foreign Relations and Government Affairs.

The conferees expect the report to be as complete as possible. The President should utilize all available federal sources of information in compiling this report. For example, the Department of Commerce collects information for the United States Trade Representative to identify cases in which the researchers of American companies have been denied access to foreign government supported research and development facilities. This information could prove valuable to the report and could be supplemented with pertinent information derived from other federal sources on the access of U.S. federally-supported researchers.

The additional federal sources of information could include responses to Federal Register notices, findings contained in the Foreign Trade Barriers Report (section 303 of the Trade and Tariff Act of 1984), and reports from the National Science Foundation, the Commercial Services Officers of the Department of Commerce, and the Science Attaches of the State Department.

In directing that information on such access be included in the Title V annual report, the conferees intend that such information be readily available to federal agencies and the Congress for use in the implementation and oversight of relevant laws and executive orders governing U.S. access to foreign science and technology facilities and activities.

Section 5171(d) provides criteria for the Secretary of State to consider in negotiating U.S. international science and technology agreements. In addition, it emphasizes the importance of review by affected agencies of proposed international science and technology agreements and requires the Secretary of State to make sure such consultation takes place.

Specifically, the Conference Agreement requires the Secretary of State to provide all interested federal agencies with an opportunity to review proposed U.S. international scientific and technological agreements. These agencies are to include those responsible for (i) federal technology management policies; (ii) national security policies; (iii) United States trade policies; and (iv) relevant executive orders. Examples of agencies with responsibility for such policy areas are the Department of Commerce, the Department of Defense, and the United States Trade Representative.

While the Secretary of State is assigned primary responsibility for coordination and oversight of U.S. international science and technology agreements, he shall ensure that all affected agencies are aware of international science and technology negotiatons which are in their area of policy responsibility but carried out by other agencies. The Secretary of State shall consult with these affected agencies and provide them with an opportunity to use their expertise to ensure that final effective agreements are crafted.

PART III. NATIONAL CRITICAL MATERIALS COUNCIL

Sec. 5181. The National Federal Program Plan for Advanced Materials Research and Development

Present law

Title II of P.L. 98-373 establishes the National Critical Materials Council and, among other mandates, calls for the establishment by the Council of a National Federal program plan for advanced materials research and development.

House bill

No provision.

Senate amendment

The Council is required to submit such plan to Congress not later than 180 days after enactment of this law.

Conference agreement

The conferees agree to accept section 3881 of H.R. 3 as an amendment to the National Critical Materials Act, providing the Senate amendment is modified to designate the appropriate Committees of Congress, which are to receive the required plan.

Sec. 5182. Personnel Matters

Present law

Section 208 of P.L. 98-373 provided for the selection of an Executive Director, who is authorized "to employ such personnel as may be necessary for the Council to carry out its duties and functions under this title, but not to exceed twelve compensated employees."

House bill

No Provision.

Senate amendment

Requires the Executive Director to increase the number of current employees by five full-time employees, of which at least four shall be permanent, professional employees with expertise relevant to the responsibilities of the Council.

Conference agreement

Since the enactment of the Act in 1984, the Council has only hired an Executive Director, one technical consultant, and a secretary. However, the established deadlines and other provisions requiring "coordinating federal materials-related policies", "reviewing and appraising the various programming and activities of the Federal Government", "to prepare a report providing a domestic inventory of critical materials . . . by April 1, 1985", and "to establish a national Federal program plan for advanced materials research and development" have not been met.

To insure that the provisions of P.L. 98-373 are compiled with, the conferees agree to accept Section 3882 of H.R. 3 as an amendment to the National Critical Materials Act. This provision calls for employment of five full-time employees, of which four shall be permanent, professional employees. To insure that the professional employees will have the technical and scientific background necessary to conduct the inventories, analyze budgets and assess the progress, the managers agree that the employees shall qualify for a GS rating of 13 or higher. In specific areas and for certain activities, it may be appropriate to employ scientists with expertise at the GS-9 through -13 level. Nevertheless, the conferees believe that the Council must be staffed with personnel having analytic, technical and/or scientific experience and advanced degrees.

Sec. 5183. Authority to Accept Services and Personnel from other Federal Agencies

Present law

Sec. 210 of P.L. 98-373 gives authority to the Council to use services or personnel of other Federal agencies on a reimbursable basis.

Senate amendment

The Council is authorized to use services or personnel of other Federal agencies on a non-reimbursable basis.

Conference agreement

The conferees agree to accept Section 3883 of H.R. 3 as an amendment to the National Critical Materials Act.

Sec. 5184. Authorization of Appropriations

Present law

Section 211 of P.L. 98-373 authorizes such sums as necessary until September 30, 1990.

House bill

No provision.

Senate amendment

Extends the authorization of appropriations to 1992.

Conference agreement

The conferees agree to accept Section 3884 of H.R. 3 as an amendment to the National Critical Materials Act.

SUBTITLE C—COMPETITIVENESS POLICY COUNCIL ACT

Section 5201—Short Title

Present law

No provision.

House bill

Cites the subtitle as the "Council on Industrial Competitiveness Act".

Senate amendment

No provision.

Conference agreement

The conferees agree to cite the subtitle as the "Competitiveness Policy Council Act".

Section 5202—Findings and Purposes

Present law

No provision.

House bill

Contains general findings on America's economic competitiveness problems and on the purpose of the Council, which is to create an institutional forum where business, government, labor, academia and public interest groups can identify competitive problems, develop long-term strategies and create consensus in support of these strategies.

Senate amendment

No provision.

Conference agreement

The conferees agree to accept a modified version of the House provision setting out general findings on America's economic competitiveness problems and stating the purposes of the Council, which is to create an institutional forum where business, government, labor, academia and public interest groups can analyze information on the competiveness of the U.S., identify competitive problems, develop long-term strategies, make recommendations, and publish their analyses.

Section 5203—Council Established

Present law

No provision.

House bill

The Council on Industrial Competiveness is established in the Executive Office of the President as an advisory council.

Senate amendment

President shall establish within 90 days of enactment the Council on Economic Competitiveness, an advisory council under the provisions of the Federal Advisory Committee Act, except the council sunsets after 4 years rather than the 2 years called for in the act.

Conference agreement

The conferees agree to establish the Competitiveness Council (CPC) under the provisions of the Federal Advisory Committee Act (FACA).

Section 5204—Duties of the Council

Present law

No provision.

House bill

The duties of the Council are to (a) develop policies to enhance international competitiveness and productivity; (b) review requests for governmental assistance and recommend actions of the private sector to ensure future competitiveness as a condition of such assistance, but only on the request of the President; (c) identify export opportunities and develop strategies for penetrating such markets; (d) collect and analyze data on economic conditions and market

trends; (e) publish reports; (f) create forums where leaders of business, government, labor, academia and public interest activities will identify economic problems, develop recommendations and create consensus; (g) report to the President and Congress on the state of economy, the status of major sectors and the effects of existing government policies on agriculture, business and industry; (h) provide policy recommendations regarding specific issues concerning agricultural, business and industrial strategies; and (i) evaluate existing government policies.

Senate amendment

The duties of the Council are to (a) collect, analyze and provide information on current and future economic competitiveness; (b) monitor changes in research, science and technology and the changing nature of the U.S. economy to provide marketable, high-quality goods and to respond to international competition; (c) create a forum where national leaders from business, government, labor, academia and public interest activities will identify economic problems, develop recommendations and create consensus; (d) develop and promote a national vision and specific policies which enhance international competitiveness and productivity; (e) serve as a clearinghouse on Federal and private sector resources devoted to increasing competitiveness and on State and local programs devised to enhance competitiveness; (f) comment upon private sector requests for relief as to the likelihood that such relief will result in enhanced competitiveness of the applicant; (g) establish, when appropriate, subcouncils for specific sectors and economic issues; (h) review and evaluate subcouncil recommendations; (i) prepare reports on recommendations; (j) submit an annual report to the President and the Congress on the ability of the U.S. to be internationally competitive, the status of major sectors, and the effects of existing policies; and (k) evaluate and comment upon existing and future policies and regulations and the Federal budget with respect to their impact on competitiveness.

Conference agreement

The conferees agree to a modified provision concerning the duties of the Council which combines the House and Senate provisions. The Council is intended to be solely an advisory and review body. It is not intended to be a body for making Federal policy, nor does it have any operational function outside of the powers to review and comment.

In that regard, the duty of the Council to comment upon private sector requests for governmental assistance or relief is intended to be a advisory role only. The conferees do not intend that this function create any new administrative process concerning the granting of such assistance or relief. The Council should make its comments known through the normal public comment process where one exists. However, it is the conferees' belief that the purpose of governmental assistance or relief to firms in the private sector should be to facilitate adjustment and should be accompanied by a plan of action which will ensure that the applicant is likely to become internationally competitive in the future. It is the intent of the conferees tha tthe Council will provide a forum where such plans of action can be discussed.

Section 5205—Membership

Present law

No provision.

House bill

The Council shall consist of 16 members appointed by the President after consideration of such recommendations from the Speaker of the House of Representative and the Majority Leader of the Senate. Four members shall be appointed each from business, labor, academia or public interest activities, and Federal government and state and local governments.

Initial appointments shall be made within 60 days of enactment. Vacancies are to be filled in the same manner as original appointment, only for remainder of term or until successor has taken office. Members can be removed by the President only for malfeasance in office. Member's terms of office shall correspond to the President's term, however no member may serve more than two consecutive terms.

Non-governmental members shall be compensated at the daily rate of Executive Schedule Level II for each day engaged in duties of the Council and receive travel expenses and per diem. Federal, state and local government members shall serve without additional compensation but shall receive travel expenses and per diem.

Nine members shall constitute a quorum, except a lesser number may hold hearings with approval of two-thirds vote of entire Council. The Council shall not commence its duties until all members from business, labor, academia, and public interest activities have been appointed. The chair shall be elected from members from business, labor, academia, and public interest activities by two-thirds vote of entire Council. The Council shall meet at the call of the chair or majority of members. However the Council must meet at least 6 times a year. Policy actions of the Council, except for hearings and the calling meetings, requires a two-thirds of entire membership.

An individual is prohibited from being appointed a member of the Council if they had acted as a agent of a foreign government any time for a period one-year before appointment. Members are prohibited from acting as agents of a foreign government and members may not act as an agent of a foreign government for 1 year after the end of their service. The penalty for violation of this provision is a fine of not more than the greater of $250,000 or the amount in compensation received in the prohibited action.

Senate amendment

The Council shall consist of 9 members—3 appointed by the President, 3 by the Majority Leader and the Minority Leader of the Senate acting jointly, and 3 by the Speaker of the House. Members shall be appointed from business, labor, academia, public interest activities, and State and local governments. There are to be no members from the Federal government. No more than 5 members may be from any one political party.

Initial appointments are to be made within 90 days of enactment and vacancies are to be filled in the same manner as described in the House bill. Members may be removed only for malfeasance in office. Members are to be compensated in the same manner as described in the House bill.

Members may not serve as agents of a foreign power as defined in the Foreign Agents Registration Act.

Five members shall constitute a quorum, except that a lesser number may hold hearings on approval of majority of entire council. A chair shall be from the members by majority of entire membership and shall serve on a full time basis.

The Council shall meet at the call of the chair or a majority of the members. There is no required number of meetings. Members may designate an alternate for all purposes, including voting. Policy actions shall require majority vote of entire membership. However, if majority consensus can not be reached on a matter referred to the Council by the President or the Congress, the Council shall explain why a consensus could not be reached and include all relevant information and policy options.

Conference agreement

The Council shall consist of 12 members—4 appointed by the President, one each appointed from business, labor, public interest activities, and the Federal government; 4 by Majority Leader and Minority Leader of the Senate, acting jointly, one each appointed from business, labor, academia, and State or local governments; and 4 by the Speaker of the House of Representatives and the Minority Leader, acting jointly, one each appointed from business, labor, academia, and State or local governments. It is the conferees' intent that the Council consist of one representative from State government and one from local government—the appointment of which is to be determined by Congressional leaders. Other Federal officials may participate on an ex-officio basis as requested by the Council. It is the intent of the conferees that the Council be bipartisan. No more than 6 members of the Council shall be from the same political party. It is also the intent of the conferees that the notion of "balance" in membership embodied in FACA be scrupulously adhered to in the appointment of the Council's members.

The members of the Council should be nationally recognized individuals with broad knowledge of the U.S. and world economies and the competitiveness problems and opportunities facing the United States.

Initial appointments to the Council shall be made within 30 days after January 21, 1989. The conferees intend that appointments be made by the new Administration and the new Congress. Vacancies are to be filled in the same manner as original appointment and only for the remainder of the term. Members may be removed only for malfeasance in office.

Since the Council is subject to the FACA two year sunset provision, member's terms will initially coincide with the life of the Council. Howver, it is the hope of the conferees that members will be re-appointed on a rolling basis if the Council is reauthorized.

Non-governmental members shall be compensated at the daily rate of GS-18 for each day engaged in duties of the Council and receive travel expenses and per diem. Federal, state and local government members shall serve without additional compensation but shall receive travel expenses and per diem.

Seven members shall constitute a quorum, except a lesser number may hold hearings with approval of two-thirds vote of the entire Council. The Council shall not commence duties until all non-governmental members have been appointed. The chair shall be elected from non-governmental members by two-thirds vote of entire Council. The Council shall meet at the call of the chair or majority of members. Policy actions of the Council, except for hearings and the calling of meetings, require a two-thirds vote of the entire membership. Members may designate one alternate to attend meetings, but the designated alternate may not vote.

Members may not serve as agents of a foreign principal and are required to file a financial disclosure report. However, the reports are to be held confidential and exempt from any law requiring their public disclosure. Members are considered special Government employees for purposes of the sections of the U.S. Code concerning bribery of public officials, graft, claims against the United States and acts affecting a personal financial interest. The conferees recognize that members of the Council are, in part, representatives of a particular interest and do not consider the advocacy of those interests a conflict of interest.

The Council may procure services of consultants and may request agencies to detail personnel to the Council on a reimbursable basis.

Section 5206—Executive Director and Staff

Present law

No provision.

House bill

Provides for a full time executive director as principal administrative officer, paid at ES Level V. The executive director may appoint staff within the limitations of the Council's appropriations in accordance with civil service laws. The Council may procure services of consultants and may request agencies to detail personnel to the Council on a reimbursable basis.

Senate amendment

Same as the House bill, except that the Council is required to consult with the President and Congress before appointing the executive director.

Conference agreement

The conferees agree to a modified version of the House provision providing that the executive director be paid at no higher than a GS-18 level. The executive director may appoint staff within limitations of Council's appropriations in accordance with civil service laws. The staff of the Council shall be considered special government employees for the purposes of the sections of the U.S. Code concerning bribery of public officials, graft, claims against the United States, and acts affecting a personal financial interest. The staff is also covered under 18 U.S.C. 207, barring employees from lobbying their former agency for one year after leaving government service.

Section 5207—Powers

Present law

No provision.

House bill

The Council may hold hearings, authorize agents, obtain information from Federal departments and agencies, use U.S. mails, and request administrative support from GSA on a reimbursable basis. No provision on consultation with the President and the Congress.

Senate amendment

Similar to the House bill, except Council may also administer oaths, may accept gifts, and may not obtain classified information. The Council shall consult with the President or Congress at their request on competitiveness issues. The Council shall prepare a plan of work, including description of how Council will coordinate with existing advisory committees, for submission to the President and Congress. The President may, within 30 days of receipt, make recommendations as to modifications. Council shall consider President's recommendations.

Conference agreement

The conferees agree to a modified version of the Senate provision. The Council may hold hearings, administer oaths, accept gifts, use U.S. mails, request administrative support from GSA on a reimbursable basis, and obtain information from Federal departments and agencies but may not obtain classified information. Within 60 days of the initial appointment of members, the Council must submit a report to the President and Congress outlining its plan of work, including the extent to which the Council will coordinate with other advisory committees.

Section 5207(h)—Subcouncils

Present law

No provision.

House bill

No provision.

Senate amendment

The Council may set up subcouncils for each sector identified in the annual report as of national significance because of employment, capital resources, impact on defense, or as supplier to or customer of other U.S. industries, and which would benefit from such a subcouncil. The Council may also set up subcouncils for any other purpose. The subcouncils shall include representatives from business, labor, government and any other persons the Council determines is appropriate. The subcouncils shall assess problems and opportunities for the industry in question and make recommendations. Discussions of the subcouncil are exempt from Federal and State anti-trust laws, and from the Federal Advisory Committee Act. Subcouncils shall terminate 30 days after making their recommendations unless the Council specifically requests the subcouncil continue.

Conference agreement

The conferees agree to a modified version of the Senate provision under which the Council may establish, for such period of time as the Council determines appropriate, subcouncils of public and private leaders to analyze specific competitiveness issues. The subcouncils shall include representatives from business, labor, government and any other persons the Council determines is appropriate and must include a representative of the Federal government. The subcouncils shall assess problems facing the industry or the policy issue in question and make recommendations to encourage adjustment and modernization of an industry, to facilitate an industry's reponse to opportunities and risks, and to alleviate the problems in a particular policy area. Discussions of the subcouncil are exempt from Federal and State anti-trust laws, and from the Federal Advisory Committee Act. Subcouncils shall terminate 30 days after making their recommendations unless the Council specifically requests the subcouncil continues.

It is the intent of the conferees that subcouncils be utilized to analyze specific competitiveness issues, such as research and development needs or education and worker retraining, and to facilitate the adjustment process of specific industries.

It is not the intent of the conferees that subcouncils be created for every industry and for every competitiveness issue, or that the subcouncils be created for an indefinite time. Subcouncils should be created by the Council only for those industries and issues which the Council believes warrants special attention and should be dissolved within a reasonable time.

Section 5207(i)—Applicability of the Federal Advisory Committee Act

Present law

Subsections (e) and (f) of section 10 of the Federal Advisory Committee Act require that an officer or employee of the Federal government chair or attend every meeting, that this officer can adjourn, and that the committee can not meet without the approval of this officer. Section 14 sunsets all advisory committees after two years, unless renewed.

House bill

No provision.

Senate amendment

Exempts the Council from subsection (e) and (f) of section 10 and from section 14, but with a 4-year sunset clause.

Conference agreement

The conferees agree to a modified version of the Senate provision exempting the Council from subsections (e) and (f) of section 10 of the Federal Advisory Committee Act (FACA). The conferees took this action to enhance the independent nature of the Council.

Section 5208—Annual Report

Present law

No provision.

House bill

Within 100 days after initial appointment of members, the Council shall report recommendations for changes in Federal policy to implement trade and competitiveness strategies. The Council shall prepare an annual report to the President and Congress on major agricultural, business and industrial development priorities, policies needed to meet these priorities and a summary of existing policies affecting industry. The report shall contain any findings and conclusions made during the past fiscal year, and recommendations for such legislation and administrative actions as the Council considers appropriate.

Senate amendment

Within 1 year of enactment, the Council shall submit a report to the President and Congress on recommendations for changes in policies, including reorganization. The Council shall prepare an annual report to Congress and the President shall contain goals to achieve a more competitive economy, policies needed to meet such goals, a summary of existing policies affecting competitiveness, and actual or foreseeable economic and technological developments affecting the competitive position of the United States. The report shall identify actual or foreseen developments which create a competitive challenge to or dislocation of U.S. industry, present an opportunity or create a risk that U.S. firms will be unalbe to compete—including an identification of the specific sectors affected. The report also shall contain any findings and conclusions made during the past fiscal year, and recommendations for such legislation and administrative actions as the Council considers appropriate. Each report submitted to Congress shall be referred to the appropriate committee or committees and the Council shall consult with such committees. These committees shall submit to their respective House a report setting forth the views and recommendations of the committee on the Council's report.

Conference agreement

The conferees agree to a modified version of the Senate provision requiring an annual report to the President and the Congress, specifically the Governmental Affairs Committee and other appropriate committees of the Senate, and the appropriate committees of the House of Representatives. The annual report shall contain goals to achieve a more competitive economy, policies needed to meet such goals, a summary of existing policies affecting competitiveness, and a summary of economic and technological developments affecting competitive position of U.S. The report shall identify actual or foreseen developments which create a competitive challenge to or dislocation of U.S. industry, present an opportunity or create a risk that U.S. firms will be unable to compete—including an identification of the specific sectors affected. The report also shall contain any findings and conclusions made during the past fiscal year, and recommendations for such legislation and administrative actions as the Council considers appropriate and any recommendations for the elimination, consolidation or reorganization of government agencies concerned with competitiveness issues, including trade policy and research, science and technology. Each report submitted to Congress shall be referred to the appropriate committee or committees and the Council shall consult with such committees. These committees shall submit to their respective house a report setting forth the views and recommendations of the committee on the Council's report. It is the conferees' intent in this section to ensure that close attention is paid by the Congress and the President to the Council's comments and recommendations.

Section 5209—Authorization of Appropriations

Present law

No provision.

House bill

Authorities $5 million for FY88.

Senate amendment

Authorities up to $5 million for each of FY88 and FY89.

Conference agreement

The conferees agree to a modified version of the Senate provision which authorizes up to $5 million for each of FY89 and FY90.

Section 5210—Definitions

Present law

No provision.

House bill

Defines the term "Council" as the "Council on Industrial Competitiveness, "member" as a member of the Council on Industrial Competitiveness, and "United States" as meaning each of the several states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Northern Mariana Islands, American Samoa and any other territory or possession of the United States.

Senate amendment

Same as House bill, except uses the title "Council on Economic Competitiveness".

Conference agreement

The conferees agree to a modified version of the House provision, substituting "Competitiveness Policy Council" for "Council on Industrial Competitiveness", and adding a definition of the term "agent of a foreign principal" to have the same meaning as in the Foreign Agents Registration Act.

SUBTITLE D—FEDERAL BUDGET COMPETITIVENESS IMPACT STATEMENT

FEDERAL BUDGET COMPETITIVENESS IMPACT STATEMENT

(Section 1601-1603 of House Bill; no provision in Senate amendment)

Present Law

No provision.

House bill

The House provision requires the Office of Management and Budget (OMB), in the President's annual budget submission, to assess the impact of the federal budget on the U.S. trade balance and other important economic indicators. OMB, in consultation with the Chairman of the Council of Economic Advisors, is to project, for the fiscal year in which the budget is submitted, the amount of Government borrowing in private credit markets, net domestic savings, net private domestic investment, the merchandise trade and current accounts, U.S. foreign indebtedness, and the effect of Government borrowing on interest and exchange rates.

The two Congressional Budget Committees, after consultation with the Director of the Congressional Budget Office, are to include, upon submission of the concurrent budget resolutions, a similar analysis of their impact on U.S. competitiveness.

Conference Agreement

The Senate conferees accept the House provision.

REDUCING THE TRADE DEFICIT BY ELIMINATING THE FEDERAL BUDGET DEFICIT

(No provision in the House bill; Title XLVIII of the Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The amendment requires Congress to complete action, no later than October 1, 1987, on a constitutional amendment requiring a balanced Federal budget. The amendment also requires the President to submit a balanced budget to Congress no later than September 15, 1987.

Conference agreement

The Senate recedes.

SUBTITLE E—TRADE DATA, IMPACT, AND STUDIES

PART I—NATIONAL TRADE DATA BANK

Section 5401—Definitions

Present law

No provision.

House bill

Defines "Secretary" as the Secretary of Commerce, "Department" as the Department of Commerce and "System" as the export promotion data system.

Senate amendment

Defines "Committee" as the National Trade Data Committee, "Data Bank" as the National Trade Data Bank, and "Executive agency" as having the meaning in 5 U.S.C. 105.

Conference agreement

The conferees agree to use the relevant portions of both definitions, defining "Committee" as the Interagency Trade Data Advisory Committee, "Data Bank" as the National Trade Data Bank, "Executive agency" as having the meaning in 5 U.S.C. 105, "Secretary" as the Secretary of Commerce, "export promotion data system" as the system established in section 3816 and currently known as the Commercial Information Management System, and "international economic data system" as the system established in section 3816 containing policymaking data.

Section 5402—Interagency Trade Data Advisory Committee

Present law

No similar provision.

House bill

No provision.

Senate amendment

A National Trade Data Committee is established, chaired by the Secretary of Commerce, with the Secretaries of Agriculture, Defense, Labor, Treasury and State, the USTR, the Director of OMB, the Director of Central Intelligence, the Chairman of the Federal Reserve Board, and the Chairman of the ITC as members. The President may appoint any other Federal officials as members. Except for the Chairman and other officials appointed by the President, each member may appoint a designee.

Conference agreement

The conferees agree to create an Interagency Trade Data Advisory Committee, to be chaired by the Secretary of Commerce, with the Secretaries of Agriculture, Defense, Labor, Treasury and State, the USTR, the Director of OMB, the Director of Central Intelligence, the Chairman of the Federal Reserve Board, and the Chairman of the ITC, the President of the Export-Import Bank, and the President of the Overseas Private Investment Corporation as members. The President may appoint any other Federal officials as members. Each member may appoint a designee.

Section 5403—Functions of the Committee

Present law

Under the Paperwork Reduction Act (P.L. 96-511), the Office of Information and Regulatory Affairs within OMB is charged with coordinating agency information practices.

House bill

No provision.

Senate amendment

The function of the Committee is the formulation and implementation of a comprehensive economic and trade information policy and to direct the Secretary of Commerce in the establishment and operation of the National Trade Data Bank.

Conference agreement

The conferees agree to create the Committee to advise the Secretary of Commerce on the operation of the National Trade Data Bank. It is the conferees' intent that the Committee, rather than OMB, serve as a focal point for interagency coordination of trade data and for the creation of a coherent trade information policy within the Federal government.

Section 5404—Consultation with private sector and government officials

Present law

No specific provision. Section 135 of the Trade Act of 1974 creates a system of advisory committees to advise USTR and the President on matters of trade negotiations and to provide technical assistance and information.

House bill

With regard to the export promotion data system, the House bill requires the Secre-

tary to consult with representatives of the private sector, including export associations, and with State agencies that promote exports.

With regard to the National Trade Data Bank, the House bill requires the Secretary to consult with the USTR advisory committees, other representatives of the private sector and other Federal departments and agencies.

Senate amendment

With regard to the export promotion data system, the Senate amendment requires the Secretary to consult with representatives of the private sector and State agencies that promote exports. Consultations shall include data covered, cost-sharing arrangements and a forum for regular consultation.

With regard to the National Trade Data Bank, the Senate amendment requires the Committee to consult with representatives of the private sector and officials of Executive agencies and State and local governments. Consultations shall include how to make trade information more accessible, understandable and relevant and what data should be included in the export promotion data bank.

Conference agreement

The conferees agree to accept a modified version of the Senate amendment concerning the National Trade Data Bank which requires the Secretary to consult with representatives of the private sector and officials of Executive agencies and State and local governments. The conferees underscore their intent that the Secretary consult regularly with all interested parties concerning the design and operation of the data bank and concerning the type and amount of data to be included.

Section 5405—Cooperation among executive agencies

Present law

No provision.

House bill

Requires that the Secretary of Commerce determine which agencies generate information that should be included in the export promotion data system and that the President direct those agencies to provide the data bank with access to the information. For electronically stored information, the agencies must provide the necessary interconnection.

With respect to the National Trade Data Bank, the House bill requires each department and agency to cooperate with the Secretary of Commerce by making information available for the data bank and requires the Secretary to make the data contained in the data bank available to appropriate departments and agencies.

Senate amendment

Requires each executive agency to furnish to the Committee, upon request of the Chairman, such information as the Committee considers necessary and that each agency adopt and implement the information policies formulated by the Committee.

Conference agreement

The conferees agree to a modified version of the House provision which requires each department and agency to furnish such information as the Secretary of Commerce, in consultation with the Advisory Committee, considers necessary for the data bank. It is the intent of the conferees that the National Trade Data Bank be a centralized point of access for information on trade and international economics throughout the Federal government. To do so, it is important that the data bank consist of trade data from all appropriate Federal departments and agencies, not just the Commerce Department.

Section 5406—Establishment of the data bank

Present law

No provision. The Department of Commerce currently operates the Commercial Information Management System, known as CIMS, for export promotion purposes.

House bill

The House bill establishes an export promotion data system which includes data on a) U.S. exports by State of origin, port of departure and importing country; b) U.S. imports of goods and services by country of origin; c) specific business opportunities and contacts in foreign countries; d) characteristics of specific sectors with high export potential such as size of market, distribution of products, competition, applicable laws, government officials, and trade associations and other contact points; and e) general information on foreign countries such as economic conditions, common business practices, tariffs and trade barriers, and other significant laws and regulations regarding imports and exports.

The House bill also establishes a National Trade Data Bank which includes a) information on each foreign country on general economic conditions, demographics and common business practices; b) information on specific sectors within each foreign country such as size of market, distribution of products, competition, applicable laws, consultants, government officials, trade associations; c) information on specific business opportunities in each foreign country; d) general import and export data for each foreign country; e) industry specific import and export data for each foreign country; f) product and service specific import and export data for the U.S.; g) market penetration ratios of imports to the U.S. and country of origin; h) rank ordered national destinations for exports of the U.S.; i) exchange rates of all foreign currencies; j) market research for each foreign country; k) information on intellectual property rights; l) general labor market information; m) internationally comparable wage rates; n) foreign and domestic unemployment rates, availability of skilled and professional workers, hiring and firing restrictions and labor productivity trends; o) comparative international tax rates; p) export financing information; q) information on interest rates, and cost and availability of capital; r) national input/output tables for the U.S. and other nations; and s) any other information the Secretary determines to be useful other than the information contained in the annual report on foreign trade barriers.

Senate amendment

The Senate amendment establishes an export promotion data system which includes a) U.S. exports of goods and services by State of exporter, port of departure and country of first destination; b) U.S. imports of goods and services by country shipping the import, original port of entry and State of first destination; c) specific business opportunities; d) specific sectors with high export potential such as size of market, distribution of products, competition, significant laws etc., government officials, trade associations and other contact points; and e) general information on foreign countries such as economic conditions, common business practices, significant tariff and trade barriers, and other significant laws and regulations regarding imports and licensing.

The Senate amendment also establishes a National Trade Data Bank with two data bases; one for policymaking and one for export promotion. The policymaking data base contains a) data on merchandise imports and exports including aggregate import and export data, industry specific data, product and service specific data, market penetration ratios, and rank ordering of foreign destinations of U.S. exports; b) data on international service transactions; c) information on capital markets including interest rates, exchange rates and foreign direct investment in the U.S.; d) international labor market information including internationally comparable wage rates for major industries, unemployment rates, and trends in labor productivity; e) information on government policies including import and export restrictions, export financing polices, tax policies and labor market policies; f) State-by-State import and export data including country shipping import, State of first destination and original port of entry for imports of goods and services, and State of exporter, port of departure and country of first destination for exports of goods and services; and g) any other information the Committee determines to be useful.

The second data bank on export promotion contains a) information of business activities in foreign countries including general economic conditions and demographics, common business practices, tariffs and trade barriers, and other laws and regulation regarding imports and licensing; b) information on specific sectors including size of market, distribution of products, competition, major applicable laws etc., appropriate and other business contacts; c) information on specific business opportunities; d) market research; e) information on intellectual property rights; f) export financing; g) information on trade actions of other governments; and h) other information the Committee determines to be useful to business engaged in exports and Federal and State agencies that promote exports.

Conference agreement

The conferees agree to accept a compromise based on the House bill and Senate amendment. The conferees recognize two distinct purposes for trade data: policymaking and analysis, and export promotion. The conference agreement establishes a National Trade Data Bank consisting of two data bases: the International Economic Data System and the Export Promotion Data System.

The International Economic Data System shall include information useful to policymakers and analysts concerned with international trade and economics, which may include a) data on imports and exports including aggregate import and export data, industry specific data, product and service specific data, market penetration ratios, and foreign destinations of U.S. exports; b) data on international service transactions; c) information on capital markets including interest rates and exchange rates; d) information on foreign direct investment in the U.S.; e) international labor market information including internationally comparable wage rates for major industries, unemployment rates, and trends in labor productivity; f) information on government policies including trade barriers and export financing policies; g) State-by-State import and export data aggregated at the product level includ-

ing country shipping import, State of first destination and original port of entry for imports of goods and services, and State of exporter, port of departure and country of first destination for exports of goods and services; and h) any other information collected by the Federal government the Secretary determines to be useful.

The International Economic Data System shall not contain information which identifies specific parties to a transaction. This data base is not intended to include data on all countries, but those which maintain an important economic relationship with the United States. However, the conferees do intend that the data base provide a single and complete source of information on trade and international economics compiled or obtained by the Federal government.

The conferees recognize the importance of state trade agencies in promoting exports and their need for information. These agencies need state-by-state export and import data to assess their current efforts in expanding exports, particularly from small and medium size firms. For this reason, this section specifically directs that the International Economic Data System include data on U.S. exports of goods and, where possible, services categorized by the state of the exporter, port of departure, and importing country of first destination. It is also to include data on U.S. imports of goods and, where possible, services by country shipping the import, port of entry, and state of ultimate destination. It is the conferees' intent that, where practical, both the export and import data are to be provided at the 7-digit SIC code product level. Where necessary to avoid revealing parties to transactions, these data may need to be aggregated at a higher SIC code level. It is the purpose of the conferees in requiring this aggregation to ensure that the International Economic Data Systems does not compete with data bases in the private sector which serve clients by identifying specific transactions.

The Export Promotion Data System is intended as a one-stop source of export promotion information. The conferees recognize the importance of easy access by exporters to relevant information. For this reason, the Export Promotion Data System shall be designed to use the most effective means of electronic dissemination through Department or Department-designated offices or through other available data bases. The conferees also intend that only data useful to export promotion be included in this data base. All other data on international trade should be included in the International Economic Data System.

The Export Promotion Data System shall include selected data on a) specific business opportunities in foreign countries; b) specific sectors with high export potential such as size of market, distribution of products, competition, significant laws, government officials, trade associations and other contact points; c) general information on foreign countries such as economic conditions, common business practices, significant tariff and trade barriers, and other significant laws and regulations regarding imports, licensing and the protection of intellectual property; d) export financing information, and e) any other information the Secretary determines to be useful.

It is the conferees' intent that for both data bases the Secretary regularly consult with private sector and government officials to determine what data are to be included. These systems should build on current data systems, and specifically the Export Promotion Data System is expected to be an expansion of the current Commercial Information Management System and include appropriate data from other departments and agencies. While the Commerce Department maintains much of the information on export promotion, other departments, agencies and programs also have valuable export promotion information. It is the conferees' intent that all relevant information be incorporated into the Export Promotion Data System/CIMS.

The conferees express their special concern that trade data are scattered throughout the Federal government. This provision intends to pull together in a single sysem the information available throughout the Federal government on trade and international economics and on export promotion. It is not the conferees' intent that all current data banks be eliminated, but that the public be provided with a coherent point of dissemination of trade data and of export promotion data. The conferees recognize the need for data to be available in many forms and from many sources.

Section 5407—Operation of the data bank

Present law

No provision.

House bill

The House bill requires for the export promotion data system that the Secretary devise a procedure for dissemination that provides useful information to the maximum number of users.

For the National Trade Data Bank, the House bill requires the system to utilize state-of-the-art data processing technology, to be useful to groups involved in export promotion, and to be of such quality and timeliness to be useful for policymaking.

Senate amendment

The Senate amendment requires that the export promotion data system be designed to use the most effective means of electronic dissemination through Department or Department-designated offices or through other available data bases.

With respect to the National Trade Data Bank, the Senate amendment is similar to the House bill, except it requires appropriate technology rather than state-of-the-art and requires the system to facilitate dissemination through non-profit organizations' outreach programs.

Conference agreement

The conferees agree to include a compromise version of the House bill and the Senate amendment. It is the intent of the conferees that the National Trade Data Bank utilize the most appropriate data systems available to ensure easy access, including electronic access, to the data for public and private users.

Section 5408—Information on the service sector

Present law

The International Investment and Trade in Services Survey Act (P.L. 94-472 as amended by section 306 of P.L. 98-573) authorizes a mandatory benchmark survey of services transactions between U.S. and unaffiliated foreign persons. This survey by the Bureau of Economic Analysis, designated BE-20, was first proposed in 1985. OMB approval was not granted until 1987 and the survey was not begun until then.

House bill

The House bill requires that information on the service sector be as complete and as timely as information on the merchandise sector. It requires collection and dissemination of a broad base of monthly information on the service sector, and requires a new benchmark survey of unaffiliated services transactions including banking services, computer software services, brokerage services, transportation services, travel services, engineering services, health services, and construction services. The House bill also requires an index of leading indicators which includes measurement of service sector activities in direct proportion to the contribution of the service sector to the GNP.

Senate amendment

The Senate amendment is similar to the House Bill except it requires service information be as complete and timely as merchandise information to the extent possible and does not require a monthly report on services.

Conference agreement

The conferees agree to the House provision, modified so that service information be as complete and timely as merchandise information to the extent possible, that the benchmark services survey include information services, and that the Secretary provide comprehensive information on services at least once a year. It is the intent of the conferees that the survey called for in this provision be an expansion and continuation of the BE-20 benchmark survey currently being conducted by the Bureau of Economic Analysis, not a replacement for or survey in addition to BE-20. The conferees are, however, deeply concerned that the surveys required under existing laws have not been given adequate priority to meet statutory deadlines. The conferees expect the requirements of this section to be complied with expeditiously.

Section 5409—Exclusion of information

Present law

No provision.

House bill

The House bill excludes information collected in connection with any investigation and any information the disclosure of which to the public is prohibited under any other provision of law.

Senate amendment

The Senate amendment is the same as House bill, but also excludes any information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive order.

Conference agreement

The conferees agree to include a provision excluding any information the disclosure of which is prohibited by law, which is specifically authorized under criteria established by Executive order or statute not to be disclosed in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive order or is otherwise authorized to be withheld under law. The conferees did not prohibit the inclusion of information collected in connection with any investigation, such as an investigation under Section 301 of the Trade Act of 1974, because such information may be appropriate for inclusion in the data bank. The conferees expect, however, that the criteria for exclusion of information that is included in the Conference Agreement are adequate to assure the exclusion

from the data bank of information that is confidential or otherwise protected.

Section 5410—Nonduplication

Present law

No provision.

House bill

Requires that the export promotion data system minimize competition between the Department and private sector information dissemination services.

For the National Trade Data Bank, the House bill requires that the Secretary ensure that information systems do not unnecessarily duplicate information systems available from other agencies or the private sector.

Senate amendment

The Senate amendment is the same as the House bill regarding the National Trade Data System.

Conference agreement

The conferees agree to a compromise based on the House bill and the Senate amendment. It is the intent of the conferees that the National Trade Data Bank should not be in competition with commercially available data bases. Nor is it the conferees' intent that the Data Bank replace existing specialized data bases. However, as stated earlier, it is the intent of the conferees that the public be provided with a coherent point of dissemination of trade data and of export promotion data.

Section 5411—Collection of data

Present law

No provision.

House bill

No provision.

Senate amendment

Other than provided for earlier concerning data on services, no independent authority is granted for the collection of any additional information.

Conference agreement

The conferees agree to include the Senate provision. The Data Bank is expected to contain that information already available to the Federal Government. However, the conferees encourage the Executive to make recommendations on how to improve the collection of data on trade and international economics.

Section 5412—Fees and Access

Present law

No provision.

House bill

With regard to the export promotion data system, the Secretary shall consider providing direct or indirect on-line access to all or part of the data bank and contracting with the private sector to provide direct or indirect on-line access. The Secretary may establish a schedule of fees consistent with fees charged for similar services in the private sector and which allows the system to recover a reasonable portion of operating costs.

Senate amendment

The Secretary shall provide reasonable public services and access including electronic access and may charge reasonable fees consistent with the Freedom of Information Act.

Conference agreement

The conferees agree to include the Senate provision. By the inclusion of this provision, the conferees intend that the data contained in the data bank be made as widely available as possible to the private sector, Federal, State and local officials, and other interested parties involved in export promotion, trade and international economics.

Section 5413—Report to Congress

Present law

No provision.

House bill

The House bill requires the Secretary to submit a plan concerning the export promotion data system within 180 days and report to the House Foreign Affairs Committee and the Senate Foreign Relations Committee within one year of enactment on implementation of the export promotion data system, including comments from the private sector, export associations and State agencies.

The House bill also requires a report on the National Trade Data Bank by no later than December 31 of each year assessing the current quality, comprehensiveness and public and private accessibility of trade data; describing actions taken particularly actions taken during the 3 months after enactment concerning the new services transactions benchmark survey and first year after enactment concerning other service actions; describing actions planned; recommending executive and legislative actions which would ensure U.S. citizens and firms obtain access to data banks of foreign countries that is similar to access provided foreign citizens and firms to the data bank established; and recommending other legislative actions.

Senate amendment

The Senate amendment requires a report on implementation of the export promotion data bank within 6 months of enactment. The Senate also requires a report on the National Trade Data Bank similar to the House bill with the inclusion of the requirement to include comments on implementation from private sector and State agencies. This report is required only for 4 years after enactment.

Conference agreement

The conferees agree to require an interim report not more than one year after enactment and a final report not more than 3 years after enactment. The interim report shall describe actions taken to provide information on services and on State-by-State trade required by this subtitle. The final report shall assess the quality and comprehensiveness of trade data and the ability of the public to access that data, describe the actions taken to implement this subtitle, include comments from the private sector and State agencies on the implementation of the National Trade Data Bank, describe the extent to which the Data Bank is used and make recommendation to improve its operation, and describe the extent to which U.S. citizens and firms have access to foreign data banks that is similar to the access given foreign citizens and firms. Both reports are to be submitted to the Governmental Affairs Committee and the Banking, Housing and Urban Affairs Committee of the Senate, other appropriate committees of the Senate and to the House of Representatives.

PART II—IMPACT STATEMENT AND STUDIES

Section 5421—Competitiveness Impact Statements

Present law

None.

House bill

Section 901 of the House bill requires the heads of each Federal department and agency to include in reports or comments on proposed legislation a detailed statement of the legislation's impact on the U.S. trade position and the ability of U.S. firms to compete in foreign or domestic markets.

Senate amendment

No similar provision.

Conference agreement

The Conference Agreement is similar to section 901 of the House bill. The Conference Agreement, however, clarifies that agency and department heads need only make statements on proposed legislation which may affect the ability of U.S. firms to compete in domestic and international commerce. The Agreement also requires that statements be made on the impact of such legislation on the international trade *and* the public interest of the United States. This will ensure that the statements take into account trade-offs engenderd by the proposed legislation in which the trade balance improves but at the risk of jeopardizing national security, health and safety, or other non-trade interests.

The Conference Agreement states that this section provides no private right of action on the need for or adequacy of the required impact statement. The conferees also agreed that the provision shall sunset six years from the date of enactment.

SECTION 5422—SEMATECH STUDY AND REPORT

Present law

The National Defense Authorization Act of Fiscal Years 1988 and 1989 (15 U.S.C. 4603(a); P.L. 100-180) authorizes the Semiconductor Manuacturing Technology Initiative known as SEMATECH as a joint government-industry effort to undertake research for the development of manufacturing technology that would meet commercial and defense needs of the United States. P.L. 100-180 authorizes $100,000,000 to be expended for this purpose in FY 1988. under the Continuing Resolution of Fiscal Year 1988, $100,000,000 was appropriated for the consortium for use during fiscal year 1988. The Defense Authorization Act also establishes an Advisory Council on Federal Participation in Sematech and requires it to "conduct an annual review of the activities of Sematech for the purpose of determining the extent of [its] progress in carrying out "the annual operating plan called for under a Memorandum of Understanding.

House bill

Under section 911 of the House passed bill, the House authorizes expenditures of $100,000,000 for each fiscal year 1988 through 1992 to a consortium of persons engaged in the United States in the manufacture of semiconductors. The grants made to the consortium are to be used for research and development of advanced semiconductor manufacturing technology.

Under this section, the Secretary of Commerce is charged with the responsibility of submitting a plan to the Congress delineating which consortium should receive funds and what the function of the consortium should be. Furthermore, the provision states that no grant of funds could be made to a consortium until such a plan is submitted to Congress and another law is enacted authorizing the grants.

Senate amendment

The Senate bill establishes an Interagency Coordinating Committee on Federal Partici-

pation in Sematech chaired by the Secretary of Defense and including the Secretaries of Commerce and Energy as well as the Director of the National Science Foundation and the Chairman of the Federal Laboratory Consortium for Technology Transfer. The Committee, in consultation with a civilian advisory council with expertise in the area of semiconductors is charged with the preparation of a report including proposals for the amount of Federal funds to be expended, the type of research to be conducted, forms of Federal assistance, and other issues. The Senate bill authorizes the appropriation of $100,000,000 for each fiscal year 1988 through 1992.

Conference agreement

Competitiveness is one of the main issues necessitating Federal involvement in Sematech. The conferees believe that further attention should be given to assessing the civilian goals of Sematech and to the question of where future sources of federal funds for Sematech, beyond the Department of Defense, can be found.

The Conference Agreement requires the Council (designated in P.L. 100-180), under the direction of the Undersecretary of Commerce for Economic Affairs, to study the progress being made towards achieving the defense and civilian goals of Sematech, as well as developing U.S. applications of Sematech products and technology, and to report annually to Congress on these matters in each year in which Federal funds are expended.

The reports shall include an identification of potential sources of Federal funds, recommendations concerning methods and terms of such support, and an exploration of the feasibility of recoupment of the federal investment should royalties or fees result from the licensing of Sematech technology, or as a result of its dissolution and sale of its assets. In addition, the reports shall enumerate the long and short range civilian technology and commercialization goals of Sematech, describe how the major components of the Sematech program are designed to achieve these goals, and report on the annual progress of each of the components. The reports should include program plans, technical milestones, and cost estimates (including changes in plans made during the year) and explain progress made in meeting the plans, milestones, and cost estimates. The first report, including recommendations, is due by August 1, 1988.

The Conferees intend that such reports be submitted to the Committees on Governmental Affairs and Armed Services of the Senate and the appropriate Committees of the House of Representatives. The Council is encouraged to avoid duplication in preparing the reports required under this section and by P.L. 100-180 by combining efforts to the maximum extent feasible.

SECTION 5423—IMPACT OF NATIONAL DEFENSE EXPENDITURES ON INTERNATIONAL COMPETITIVENESS

Present law

No provision.

House bill

The House bill expressed the sense of Congress that the President should evaluate the impact on U.S. competitiveness of foreign countries' expenditures on defense. In particular, the President should evaluate the economic impact of Japan's expenditure of 1 percent of its GNP on defense, as compared to the U.S. expenditure of 6 percent of its GNP on defense.

Senate amendment

The Senate bill contained no similar provision.

Conference agreement

The Conferees agreed to include the House provision.

PROVISIONS NOT INCLUDED IN THE CONFERENCE AGREEMENT

Competitiveness Development Program

Present law

No provision.

House bill

Under Section 903 of the House bill, the Secretary of Commerce would be required to establish a Competitiveness Development Program to analyze Federal, State, and Local regulation of foreign and U.S. firms and the impact of such regulation on interstate and foreign commerce. On the basis of the analysis, the Secretary would be required to develop and implement strategies and policies designed to augment the competitiveness of U.S. firms in interstate and foreign commerce.

Senate amendment

The Senate amendment contained no such provision.

Conference agreement

The Conferees have agreed to include no provision.

RELATED INITIATIVES TO SUPPORT THE PROGRAM OF ENHANCED COMPETITIVENESS

Present law

No provision.

House bill

Under Section 904 of the House Bill, the Secretary of Commerce is required to prepare an inventory of research and development relevant to the expansion of U.S. competitiveness, to consult with the Secretaries of Labor and Education regarding actions needed to be taken to upgrade labor skills, and to consult with Federal and State officials regarding the impact of regulatory requirements on the commercialization of goods and services.

Senate amendment

The Senate bill contained no similar provision.

Conference agreement

The Conferees have agreed to include no provision.

STUDY ON UNITED STATES' BARRIERS TO UNITED STATES' EXPORTS

Present law

No provision.

House bill

No provision.

Senate amendment

Section 3851 of the Senate Amendment requires the Department of Commerce to examine U.S. barriers to U.S. exports on an annual basis.

Conference agreement

Include no provision.

STUDY ON UNITED STATES' RESOURCE NEEDS

Present law

No provision.

House bill

No provision.

Senate amendment

Section 3852 of the Senate Amendment authorizes the Department of Commerce to use input-output analysis to determine the resource needs for the entire U.S. economy, critical technologies, and emerging technologies. A report on the subject is due three years following the date of enactment.

Conference agreement

Include no provision.

STUDY ON UNITED STATES' MANUFACTURING BASE

Present law

No provision.

House bill

No provision.

Senate amendment

Under Section 3853 of the Senate Amendment, the Department of Commerce is empowered to undertake a one-year study assessing the dependence of various vital services and high technology industries on the U.S. manufacturing base.

Conference agreement

Include no provision.

STUDY ON THE IMPACT OF FOREIGN FINANCIAL AND REGULATORY SYSTEMS ON U.S. COMPETITIVENESS

Present law

No provision.

House bill

No provision.

Senate amendment

Under Section 3854 of the Senate Amendment, the Federal Reserve System is required to examine annually the impact of foreign financial and regulatory systems on the ability of U.S. businesses to compete in domestic and foreign markets.

Conference agreement

Include no provision.

TITLE VI—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS

1. The House bill, but not the Senate amendment, entitles the education and training provisions of the trade bill, the "Education and Training for American Competitiveness Act of 1987."

Senate recedes with amendment naming the bill the Education and Training for A Competitive America Act of 1988.

2. The House bill, but not the Senate amendment, contains a separate statement of findings and purposes for the education and training provisions of this bill.

Senate recedes.

SUBTITLE A—ELEMENTARY AND SECONDARY EDUCATION

3. Sec. 505 of the House bill and Sec. 205 of the Senate amendment, define terms used in the education and training portions of the bill. In addition to defining "local education agency" and "State education agency", "Secretary", and "State".

A. The House bill, but not the Senate amendment, defines "institution of higher education".

Senate recedes.

B. While the Senate amendment, but not the House bill, defines "foreign language instruction".

House recedes.

4. The House bill, but not the Senate amendment, contains several general requirements applicable to all the education and training programs under this bill, as follows:

A.—Services under these programs shall be made available to historically underrepresented and underserved groups;

Senate recedes.

B.—Training under these programs may include training provided through telecommunications technologies;

Senate recedes.

C.—Where appropriate, these programs shall be coordinated with other Federal education and training programs; and

Senate recedes.

D.—Eligible participants under these programs include accredited proprietary institutions providing programs of less than 6 months duration, if such programs are otherwise eligible to participate.

House recedes with an amendment striking "1201(a)" in the general definition of "institution of higher education" and inserting "481(a)(1)" and in the same definition used in the new Student Literacy Corps striking "1201(a)" and inserting "481(a)(1)" and in the same definition for the program on technology education striking "1201(a)" and inserting "481(a)(1)".

5. In amending the Adult Education Act by adding a new section of Workplace Literacy Partnership Grants, the House bill, but not the Senate amendment, authorizes a State formula grant program to states which have approved state plans while the Senate amendment, but not the House bill, authorizes discretionary demonstration grants to education partnerships.

House recedes with an amendment stating that when the appropriations are $50 million or more, the program becomes State-administered.

6. The House bill allows grants to fund 90 percent of the cost of programs. The Senate amendment allows grants to fund 50 percent of the cost of programs.

House recedes with an amendment setting maximum Federal funding at 70%.

7. The House bill, but not the Senate amendment, specifies that grants may be used by SEAs for evaluation costs as well as for SEA and LEA administrative costs to establish programs.

Senate recedes with an amendment applying this requirement when the program becomes State-administered.

8. The House bill, but not the Senate amendment, requires that a State submit a plan which includes a description of:

A. the State approval of funding;

B. procedures under which applications for such funding may be submitted; and

C. the method utilized to obtain annual third-party evaluation.

Same as Item #7.

9. The Senate amendment, but not the House bill, includes an area vocational school as one possible component of a joint grant application.

House recedes.

10. The Senate amendment, but not the House bill, includes that the program application shall also include the following provisions:

A. a description of the plan for carrying out the requirements;

House recedes.

B. assurances that the applicant will use the funds to supplement and not supplant funds available for this purpose.

House recedes.

11. The House bill contains a provision which will make grants available to other applicants in the State who are qualified to teach literacy skills needed in the workplace if the State is ineligible for the grant. The Senate amendment does not contain a comparable provision.

Same as Item #7.

12. The House bill, but not the Senate amendment, contains an allotment formula.

Senate recedes with an amendment providing for a State minimum of $125,000. (An amendment will be included for a 1-year extension of the State plan currently required in the Adult Education Act).

13. The House bill authorizes appropriations at $50 million for FY 1988, and at such sums as may be necessary for each of fiscal years 1989-1993, i.e., a 5-year program.

The Senate Amendment authorizes appropriations at $4 million for FY 1988 only, i.e., a one-year program.

House recedes with an amendment setting the authorization at $30 million for FY 1988 and with the understanding that this program will be extended for 5 years in the Senate elementary and secondary education bill. House recedes to Senate "trigger" provision.

14. The House Bill, but not the Senate amendment, amends the AEA to establish "English Literacy Program Grants", a new program of demonstration grants, available for not more than three years, for English literacy programs for individuals of limited English proficiency.

Senate recedes with an amendment in the section requiring an audit striking "annually" and inserting "in accordance with Chapter 75, U.S.C. 31" and with an amendment permitting funds to be used for teacher training, and permitting funds from this program to be combined with funds from other programs providing literacy training to persons with limited English proficiency, with a further amendment which designates the ERIC Center for Applied Linguistics as the clearinghouse for this program, and with an amendment striking the provision limiting grants to three years.

15. A. The House Bill authorizes these appropriations at $50 million for FY 1988 and at such sums as may be necessary for each of Fiscal Years 1989 through 1993.

Senate recedes with an amendment authorizing $25 million for FY 1988 and with the understanding that this program will be extended for 5 years in the Senate elementary and secondary education bill.

B. The Bill also stipulates that funds appropriated shall remain available until expanded.

Senate recedes.

C. In addition, not more than 10 percent of funds available shall be used to carry out subsection (d) direct grants to applicants.

The Senate Amendment has no compromise provision.

Senate recedes.

16. The House Bill, but not the Senate amendment requires the Secretary to establish within the Department of Education a Federal Literacy Coordination Office to coordinate programs and provide information and guidance.

Senate recedes with an amendment requiring the Division of Adult Education to serve as the Federal literacy coordination office and includes this requirement as an amendment to the Adult Education Act.

17. The House Bill, but not the Senate amendment, authorizes a discretionary grant program for States for coordination of literacy programs.

Senate recedes with an amendment requiring the State agencies administering the Adult Education Act to carry out where feasible these activities and includes this requirement as an amendment to the Adult Education Act.

18. The House Bill authorizes appropriations at $2 million for FY 1988 and such sums as may be necessary for each of FY 1989 through 1993.

The Senate amendment does not contain a comparable provision.

House recedes,

19. The Senate Amendment, but not the House bill, authorizes a "Literacy Corps Assistance Act of 1987", a program of discretionary grants of not more than two years to institutions of higher education for establishing courses in which a student receives academic credit in exchange for voluntary literacy tutoring.

House recedes with an amendment which (1) places the program in Title I of the Higher Education Act, (2) changes the name to the "Student Literacy Corps", and (3) adds two additional assurances making the tutoring supplementary and locating the tutoring in one or more public community agencies.

20. The Senate amendment authorizes appropriations at $10 million for FY 1988 and $10 million for any fiscal year thereafter except that no funds are authorized to be appropriated for this part for more than two fiscal years.

The House bill does not have a comparable provision.

House recedes with amendment that the program will be authorized for no more than 2 fiscal years and then extended through 1991 under the Higher Education Act. House recedes to the "trigger" provision of the Senate amendment regarding the new workplace literacy program and the new technology education program.

21. The Senate amendment, but not the House bill, reauthorizes Title II (math and science education State grants) of the Education for Economic Security Act.

House recedes.

22. The Senate amendment, but not the House bill, reauthorizes Title II at $330 million for FY 1988 and such sums as may be necessary for each of fiscal years 1989 through 1993.

Senate recedes with an amendment authorizing appropriations at $175 million for FY 1988.

23. The Senate amendment, but not the House bill, reauthorizes Title III of EESA through 1993.

Senate recedes.

24. The Senate amendment, but not the House bill, authorizes appropriations of $20 million for FY 1988 and such sums as may be necessary for each of fiscal years 1989 through 1993 of Title III of EESA.

Same as Item #23.

25. The House bill, but not the Senate amendment amends Title III of EESA to authorize a new State grant program to improve instruction in elementary and secondary science and mathematics, furnish additional resources and support and encourage educational partnerships between schools and other public and private non-profit agencies.

Senate recedes with an amendment striking a duplicative provision regarding a limit on State administrative costs.

26. The House bill, but not the Senate amendment authorizes appropriations of $50 million for FY 1988 and such sums as necessary for each fiscal year 1989 through 1993 for the amended Title III of EESA.

Senate recedes with an amendment authorizing $20 million for FY 1988 and with an amendment providing no more than 1% for the outlying areas.

27. Both House and Senate authorize State formula grants for model local programs of foreign language study for elementary and secondary schools, but: The House bill authorizes the Secretary to make grants

to States which in turn make grants to LEAs.

The Senate amendment authorizes the Secretary to make grants to SEAs to pay the Federal share of program operated by LEAs.

House recedes.

28. The Senate amendment, but not the House bill, allows an LEA to offer programs to community residents.

Senate recedes.

29. The Senate amendment, but not the House bill, entitles this part as the "Foreign Language Assistance Act of 1987."

House recedes with an amendment entitling the program the Act of 1988.

30. The Senate amendment, but not the House bill, contains findings by the Congress which indicate that the economic and security interests of this nation require significant improvement in the quantity and quality of foreign language instruction offered in the nation's elementary/secondary schools and Federal funds should be made available to assist the purpose of this part.

House recedes.

31. The House bill authorizes grants in the amount of $50,000 per State and the product of $0.04 and the population of the State as determined in accordance with the most recent decennial census.

The Senate amendment has a different allocation formula for State grants in Sec. 204(a) (1) and (2).

House recedes.

32. The House bill requires that an amount similar to the first year's will be made available to the State for two additional years after the first FY during which the State receives a grant, if the Secretary determines that the State utilized the funding as specified in the approved application.

The Senate amendment has a comparable provision in Sec. 204(b).

House recedes.

33. The House bill contains a provision stating that if sums made available under the State grant program are not sufficient to pay in full the grants, then the amount of such grants will be ratably reduced.

The Senate amendment does not contain the same provision.

House recedes.

34. The House bill requires that any State desiring to receive a grant under this section shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require.

The Senate bill specifies that it is the SEA which submits that application.

House recedes.

35. In the description of the applications requirements, the House bill, but not the Senate amendment, specifies serving all resident children ages 5 through 17 despite the school attended. (Though see the descriptions in the Senate amendment in Sec. 204(c).)

House recedes.

36. The Senate amendment, but not the House bill, allows the LEA to offer the program to community residents.

Senate recedes.

37. The House bill requires an assurance of "sufficient funds from State and local resources." The Senate amendment requires assurances that "the State will pay the non-Federal share."

House recedes.

38. The House bill requires "standard" evaluations. The Senate amendment requires "reliable and valid" evaluations.

Senate recedes with amendment to combine the House and Senate provisions.

39. The Senate amendment, but not the House bill, specifies that the applicants in the State grant program be selected on a competitive basis by the State educational agency.

House recedes.

40. The Senate amendment, but not the House bill, specifies that the Federal share in the State grant program will be 50 percent for each FY.

House recedes with an amendment requiring a waiver or reduction by the Secretary of the match for school districts without adequate resources to supply matching funds.

41. The House bill, but not the Senate amendment authorizes a program of grants to higher education institutions for intensive summer language training institutes for exceptional secondary students.

House recedes.

42. The House bill, but not the Senate amendment authorizes a program of discretionary grants to States for travel to specified regions of the world for study of foreign languages and culture by advanced secondary foreign language students in their junior or senior year of high school.

House recedes.

43. The House bill, but not the Senate amendment authorizes a program of discretionary grants to states for foreign language advanced placement programs for secondary students operated by LEAs.

House recedes.

44. The House bill states that the Secretary may not make grants or enter into contracts under this Chapter except to such extent, or in such amounts, as may be provided in Appropriations Acts. The Senate amendment does not contain a comparable provision.

Senate recedes with an amendment making this provision applicable to all programs authorized in subtitles A, B, and C.

45. The House bill authorizes appropriations at $50 million for FY 1988 and such sums in 1989 through 1993 for the purpose of carrying out this chapter.

Of the amounts made available:

—86% will be made available only for carrying out section 521 (State grants);

—6% will be made available only for carrying out section 522 (summer language institutes);

—4% will be made available only for carrying out section 523 (study abroad);

—4% will be made available only for carrying out section 524 (advanced placement).

The Senate amendment authorizes appropriations for its state grant program of $35 million for FY 1988 and for each of the succeeding fiscal years ending prior to October 1, 1993.

Senate recedes with an amendment setting authorization at $20 million for FY 1988.

46. The Senate amendment, but not the House bill, outlines the requirements for the participation of private schools in the foreign language program.

House recedes.

47. The Senate amendment provides that from the sums appropriated to carry out this part in any fiscal year, the Secretary shall reserve 1% for payments to Guam, American Samoa and the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

The Senate amendment authorizes the Secretary to allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State will receive less than one-half of 1% of the remainder.

The House bill has a different allotment formula in Sec. 521(b) on p. 35.

House recedes.

48. The allotment of a State will be made available to the State for two additional years after the first FY during which the State receives this allotment if the Secretary determines that the funds made available during the first year were used as specified in the application.

The House bill has comparable provision in Sec. 521(2).

House recedes.

49. The Senate amendment but not the House bill, contains definitions for the purposes of this section.

House recedes.

50. The Senate amendment, but not the House bill, authorizes Presidential awards for elementary and secondary foreign language teachers.

House recedes with amendment adding foreign language teacher awards to the math and science teacher awards in EESA and providing an additional $1 million authorization to enable such awards to be made.

51. The Senate amendment, but not the House bill, entitles this section the "Educational Partnerships Act of 1987".

House recedes with an amendment entitling the Act of 1988.

52. Throughout this part, the House bill uses "alliances" to describe the partnerships; the Senate amendment uses "educational partnerships."

House recedes.

53. The House bill refers to the "needs . . . of schools"; the Senate amendment refers to the "need . . . to encourage excellence in education".

Combine House and Senate provisions.

53a. The House bill refers to "elementary and secondary schools"; the Senate amendment refers to "educational institutions".

Senate recedes with an amendment to include institutions of higher education in the statement of purpose and in other appropriate sections.

54. In further statements of purpose, the House bill, but not the Senate amendment, lists:

A. that business work with educationally disadvantaged students and with gifted;

Senate recedes.

B. apply the resources of communities for the improvement of elementary/secondary education; and

Senate recedes.

C. enrich the career awareness of secondary school students to exposures to the private sector and their work.

Senate recedes.

D. The House bill authorizes appropriations at $5 million for FY 1988 and at such sums through 1989-1993.

The Senate amendment authorizes appropriations at $20 million for FY 1988 through 1993.

House recedes with an amendment authorizing $10 million for FY 1988 and such sums through 1993.

55. The Senate amendment requires the Secretary to ensure that 25% of the appropriated funds in each FY be used for programs for gifted and talented children.

The House bill does not contain a comparable provision.

Senate recedes.

56. The House bill provides that an eligible alliance may use payments for projects for statewide activities, including development of model State statutes for the support of cooperative arrangements between the private sector and the elementary and secondary schools within the State.

The Senate amendment has no comparable provision.

Senate recedes.

57. The Senate amendment allows spending for projects designed to address special educational needs of gifted and talented children in elementary and secondary schools.

The House bill has no comparable provision.

House recedes.

58. The Senate amendment allows spending for projects for foreign language instruction which involves a cooperative arrangement between the private sector and elementary and secondary schools, possibly including participation of community residents.

The House bill has no comparable provision.

Senate recedes.

59. The House bill provides for the establishment within the Department of Education an Alliance for Education Board and describes its membership and other attributes.

The Senate amendment has no comparable provisions.

House recedes.

60. The House bill also requires in the application assurances that the eligible alliance will take such steps as may be available to it to continue the activities for which the eligible alliance is making application after the period for which assistance is sought.

The Senate amendment does not have a comparable provision.

Senate recedes.

61. The Senate amendment but not the House bill also specifies that the application includes assurances of the dissemination of information on the model program.

House recedes with an amendment limiting to 1% of any partnership grant the use of funds for this purpose.

62. The House bill requires the Secretary to approve applications in accordance with the general policies and guidelines established by the Board.

The Senate amendment requires the Secretary to approve applications in accordance with uniform criteria established by the Secretary.

House recedes.

63. The House bill disallows the Secretary to approve an application if the Secretary is notified that the application is inconsistent with State plans for elementary and secondary education.

The Senate amendment does not contain the same provision.

Senate recedes.

64. The House bill contains the following definitions:

A. "Board" means the alliance for education Board established pursuant to section 528;

House recedes.

B. "eligible alliance" means a local educational agency and business concern, nonprofit private organizations, institutions of higher education, museums, libraries, educational television stations, and appropriate State agencies if the State agrees to participate.

The Senate amendment does not contain comparable definitions.

House recedes.

65. The Senate amendment contains the following definitions:

A. "educational institutions" means a local educational agency or an institution of higher education, or both;

Senate recedes with an amendment changing the defined term to "local educational agency" or an institution of higher education.

B. "educational partnership" means an educational institution, and business concerns, community-based organizations, nonprofit private organizations, museums, libraries, educational television and radio stations, and appropriate State agencies if the State agrees to participate;

House recedes with an amendment adding institutions of higher education, and changing the word "alliance" to "partnerships", and changing the phrase educational institutions to local educational agencies.

C. "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965;

House recedes with an amendment striking "1201(a)" and inserting "481(a)(1)".

D. "local educational agency" has the same meaning given that term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965;

House recedes.

E. "Secretary" means the Secretary of Education;

House recedes.

F. "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands; and

House recedes.

G. "State Educational Agency" has the same meaning given that term under section 198(a)(17) of the Elementary and Secondary Education Act of 1965.

The House bill does not contain the same definitions.

House recedes.

67. Both the House bill and the Senate amendment authorize new programs for telecommunications demonstration activities; the Senate, but not the House, adds its new program to the EESA.

House recedes.

68. The House program is called the "National Educational Telecommunications Demonstration Program." The Senate program is called the "Star Schools Program Assistance Act."

House recedes.

69. The purpose of the House telecommunications demonstration program is to improve instruction in math, science, foreign languages, vocational education, continuing education, and basic and remedial education. The purpose of the Senate program is to improve instruction in math, science and foreign languages.

House recedes with an amendment clarifying that math, science and foreign languages shall be included in the program and that the program may also include other areas such as vocational education.

70. Funds under the House bill are to be used to design, develop and construct (including renovation) 9 model, regional, advanced educational telecommunications network and technology resource centers. The purpose of the Senate amendment is to enable telecommunications partnerships to use grants to develop, construct and acquire telecommunications, audio and visual facilities and equipment, and obtain technical assistance for the use of such facilities.

House recedes.

71. The House bill, but not the Senate amendment, requires equitable geographical distribution to include sparsely populated areas.

House recedes.

72. The House bill, but not the Senate amendment, requires an equal match from state funds and funds from other sources.

Senate recedes with an amendment requiring a 25% match, but permitting the Secretary to reduce or waive this requirement.

73. The Senate amendment authorizes $100 million for the period beginning October 1, 1987 and ending September 30, 1992 for this program. No appropriation in excess of $60 million may be made in any one fiscal year under this authorization. The Senate amendment further restricts a grant to an eligible telecommunications partnership to $20 million.

The House bill authorizes $10 million for FY 1988 and such sums as necessary for the 5 succeeding fiscal years for its program and specifies that funds appropriated under this section shall be made available until expended.

House recedes with an amendment authorizing the Star Schools program for the period beginning October 1, 1987 and ending September 30, 1993; limiting appropriations in any one fiscal year to $37.5 million and adding provision that funds will remain available until expended; limiting a maximum grant to a single grantee to $10 million per year, with a $20 million total maximum.

74. The Senate amendment, but not the House bill, requires not less than one-half the funds available in any fiscal year to be used for facilities, equipment, teacher training, technical assistance, or programming activities for local educational agencies that receive assistance under Chapter 1, ECIA.

House recedes.

75. Eligible grantees under the Senate program are: (1) telecommunications partnerships that include a public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, health institutions and industry and containing representatives of elementary and secondary schools participating in Chapter 1 or (2) partnerships including three or more of a list of entities cited in the bill.

The House bill would make grants available to public agencies and non-profit corporations.

House recedes with technical amendments which strike "health institutions, and industry" and insert "and other entities"; strike "contain representation of" and insert "represent"; insert ", at least one of which shall be from subparagraphs (A) or (B),"; following "agency" insert "or state higher education agency"; following "center" insert "which provides teacher preservice or inservice training and receives federal financial assistance or has been approved by a state agency".

76. The Senate amendment, but not the House bill, requires organization of the partnership on a statewide or multistate basis.

House recedes.

77. The Senate amendment, but not the House bill, specifically requires an application and spells out in detail the information

which must be submitted in an application for such a grant, including information on the types of facilities and equipment to be provided, the teacher training policies to be implemented, how schools in LEAs with high percentages of Chapter 1 children and traditionally underserved students will be served and other information.

House recedes with an amendment requiring that funds under this program supplement, and not supplant, other funds.

78. The Senate amendment, but not the House bill, contains several priorities that the Secretary must follow in funding applications.

House recedes with an amendment requiring that 25% of appropriations in any single year be used for programming.

79. The Senate amendment, but not the House bill, spells out certain duties of the Secretary with respect to compiling descriptions of courses and materials for dissemination and specifically requires dissemination to all SEAs.

House recedes.

80. The Senate amendment, but not the House bill, permits the Office of Technology Assessment upon request: to carry out an evaulation of the telecommunications systems supported under this program and prepare and submit a report to Congress.

Senate recedes.

81. The Senate amendment, but not the House bill, also permits an OTA study of an educational satellite and other related activities.

Senate recedes.

82. The Senate amendment, but not the House bill, lists definitions relevant to this program.

House recedes.

83. The House bill, but not the Senate amendment, requires the National Diffusion Network within the Department of Education to gather, arrange and disseminate information on innovative secondary and postsecondary programs; to: gather and disseminate information on collaborative efforts to improve American productivity and efficiency or enhance international competitiveness of American business; to produce a catalogue of exemplary collaborative efforts; and to provide technical assistance to institutions gathering information to replicate these models.

Senate recedes with an amendment that any program now included in the National Diffusion Network (NDN) must meet the existing requirements of the program.

SUBTITLE B—TECHNOLOGY AND TRAINING

84. The Senate amendment, unlike the House bill, has a short title for this section of the legislation, the "Training Technology Transfer Act of 1987."

House recedes with an amendment entitling the Act of 1988.

85. Both the House bill and the Senate amendment authorize a program of technology transfer. The House bill, throughout, refers to the transfer of "knowledge and education and training software." The Senate amendment refers to the transfer of "training technology."

Senate recedes.

86. The Senate amendment, but not the House bill, contains a specific reference to computer programs and videodisc systems.

House recedes.

87. The House bill, throughout, refers to the transfer of software to the "public and private sector." The Senate amendment often refers to transfer to the private sector only.

Senate recedes.

88. The House bill, but not the Senate amendment, notes that this software could help train existing workers, as well as new workers.

Senate recedes.

89. Unlike the House bill, the Senate amendment, in several places, states that this transfer would be especially beneficial to "small" business concerns, not simply to "business concerns."

House recedes.

90. In addition to those recipients of the transferred technology listed in the House bill, the Senate amendment lists State and local governments and agencies thereof, and educational systems.

House recedes.

91. Both bills create an office within the Department of Education for purposes of this program. The House bill establishes an Office of Education Software Transfer. The Senate amendment establishes an Office of Training Technology Transfer.

House recedes.

92. The House bill additionally specifies that this office shall be located within the Office of Educational Research and Improvement.

Senate recedes.

93. The Senate amendment, but not the House bill, requires the Director of this office to be appointed in consultation with the Secretaries of Commerce and Labor.

Senate recedes.

93. The House bill requires the Director to appoint a staff of *not less than* 15 persons. The Senate amendment makes these appointments permissible and limits the staff to *not in excess of* 15 persons.

House recedes on its provision and Senate recedes on its provision.

95. Both bills require the Director to maintain a listing of software or technology.

A. The House bill refers to this listing as a "clearinghouse", while the Senate amendment calls it an "inventory."

Senate recedes.

B. The House bill requires only that the Director "maintain" this listing while the Senate amendment requires the Director to "compile and maintain" it.

House recedes.

96. The House bill, but not the Senate amendment, requires the clearinghouse to include, for each item listed, the "imbedded learning and instructional strategies" therein.

Senate recedes.

97. The House bill, specifically but not the Senate amendment, requires the utilization of the communications mechanisms of State educational agencies, regional educational laboratories, and the National Center for Research in Vocational Education.

B. The Senate amendment requires the use of such mechanisms of the Educational Resources Information Center, the National Occupational Information Committee, the State occupational information coordinating committees, State job training coordinating councils, private industry councils, State economic development agencies, and the Small Business Administration.

Merge House and Senate provisions.

98. The House bill, but not the Senate amendment, would encourage the participation of organizations representing State educational agencies.

Senate recedes.

99. The House bill, but not the Senate amendment, gives the Director the authority to provide grants to public interest users.

Senate recedes.

100. The Senate amendment, but not the House bill, allows the Director to advise and consult with prospective public interest users.

House recedes.

101. The Senate amendment, unlike the House bill, specifies that the transfer of technology shall be made at no cost to the public interest user.

House recedes.

102. The Senate amendment, but not the House bill, gives the Director the authority to enter into contracts with higher education institutions and qualified business concerns for the conversion of training technology for a public interest user.

House recedes with an amendment permitting contracting to be with any qualified education agency.

103. The House bill, but not the Senate amendment, specifically allows the Director not only to sell, but also to lease the training software.

Senate recedes.

104. The House bill, but not the Senate amendment, specifically includes copyright and patent rights to such software.

Senate recedes.

105. The House bill allows sales and leases to be made "for a price or fee which reflects a reasonable return to the Government." The Senate amendment allows such sales to be "on a cost reimbursable basis."

House recedes.

106. The House bill, unlike the Senate amendment, specifically allows the Director to negotiate exclusive sale or lease agreements with commercial users.

Senate recedes.

107. The House bill requires the mandated report to be submitted before the expiration of the two-year period beginning with the date of enactment: the Senate amendment requires the submission within three years after the date of enactment.

Senate recedes with an amendment including education and training software in the definition.

108. The House bill, but not the Senate amendment, studies whether public interest "is served through the program of grants: the Senate, whether the public interest "would be served through establishment of a program of grants."

Senate recedes with an amendment to include "contracting".

109. The Senate amendment, but not the House bill, requires the Director to enter into interagency agreement with the National Technical Information Service to compile and disseminate the inventory mandated by both bills.

House recedes with an amendment permitting the Secretary of Education also to use the OERI system.

110. The House bill requires certain Federal agencies to designate "education and training software transfer officers." The Senate amendment refers to these individuals as "Training Technology Transfer Officers."

House recedes.

111. In addition to the agencies cited in the Senate amendment, the House bill makes this requirement applicable to any Federal agency which develops, not simply uses, knowledge for education and training software.

Senate recedes.

112. The Senate amendment, but not the House bill, requires the Director to cooperate with the Federal Software Exchange Center.

House recedes.

113. The House bill, but not the Senate amendment, requires the Director to consid-

er special equity concerns and to ensure that persons with special needs benefit from these software transfer activities.

Senate recedes.

114. The Senate amendment, but not the House bill, establishes and describes an advisory board to monitor, review, and advise on the technology transfer program.

Senate recedes.

115. The House bill authorizes $1 million for FY 88 and such sums as necessary for the 5 following fiscal years for the technology transfer program. The Senate amendment authorizes $5 million for FY 88 and such sums for each succeeding fiscal year (with no termination date).

House recedes with an amendment authorizing $3 million to be reserved out of funds appropriated for Regional Technology Transfer Centers.

116. The Senate amendment contains several definitions not included in the House bill because such terms are not used in the House bill or are defined in the House general provisions.

House recedes with an amendment deleting the definition of the word "board".

117. Unlike the House definition, the Senate definition of "public interest user" includes any Federal agency which uses the training technology of another Federal agency.

House recedes.

(B) The House definition of this term encompasses "State and local educational agencies", whereas the Senate definition includes "State and local governments thereof."

House recedes.

118. The House definition of "education and training software" and the Senate definition of "training technology" are virtually identical, except that the House definition uses the term "education" as well as "train" in several places where the Senate uses "training."

Senate recedes.

119. The House bill authorizes the establishment of an education demonstration program which provides that the Secretary of Education shall establish a program of grants to local educational agencies. State educational agencies, consortia of public and private agencies, organizations and institutions, and institutions of higher education to establish not more than 10 demonstration programs in technology education for secondary schools.

The Senate amendment contains the same provision except that it also includes vocational educational centers and community colleges.

House recedes.

120. The Senate amendment, but not the House bill, lists components of the program to be addressed to the extent practicable".

House recedes with an amendment which creates a priority for awarding grants to grantees which propose to serve the most components and inserting in the definition "to the extent feasible" after "components".

121. The Senate amendment, but not the House bill, also specifies that the educational course content be based on the need to foster flexibility and assist students in meeting the challenge of a changing workplace.

House recedes with an amendment deleting the paragraph referring to the need to foster flexibility and inserting in the paragraph describing the concepts, processes and technological systems the following: "and relevant to the changing needs of the workplace".

122. The House bill, but not the Senate amendment, includes "human and material resources" and "processes" as subjects for developing students' abilities.

House recedes.

123. The House bill, but not the Senate amendment, specifies that the demonstration program will also include (a) an institute for the purpose of developing teacher capability in the area of technology education; (b) statewide implementation plan for disseminating exemplary materials and practices; and (c) a combined emphasis on "know-how" and "ability-to-do" in carrying out technical work.

Senate recedes with an amendment that the demonstration program will also include teacher training programs in lieu of subsection (a) which creates an institute for the purpose of developing teacher capability in the area of technology education; and keeping (b) and (c).

124. The Senate amendment but not the House bill, includes a provision for "stressing basic remedial skills in conjunction with training and automation literacy, robotics, computer-aided design, and other areas of computer-integrated technology".

House recedes.

125. The Senate amendment contains the following definitions:

(A)—"local educational agency" has the same meaning given such term in section 198(a)(10) of the Elementary and Secondary Education Act of 1965.

House recedes.

(B)—"institution of higher education" has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965.

House recedes with an amendment changing 1201(a) to 481(a)(1).

(C)—"Secretary" means the Secretary of Education.

House recedes.

(D)—"State educational agency" has the same meaning given such term in section 198(a)(17) of the Elementary and Secondary Education Act of 1965.

House recedes.

(E)—"technology education" means a comprehensive educational process designed to develop a population that is knowledgeable about technology, its evolution, systems, techniques, utilization in industry and other fields, and social and cultural significance.

The House bill does not contain a comparable provision.

House recedes.

126. (A) The House bill, but not the Senate amendment, authorizes "such sums" for fiscal years 1989 through 1993.

Senate recedes.

(B) The Senate amendment authorizes $2 million for fiscal year 1988 only.

Senate recedes.

127. Both the House bill and the Senate amendment revise Title III, Part C of the Carl D. Perkins Vocational Education Act (Adult Training, Retraining, and Employment Development). The House bill is a complete substitute for Part C. The Senate provision is in the form of an amendment to Part C.

(A) The House bill amends the statement of findings in current law to include a reference to "experienced" adult workers.

Senate recedes with an amendment to include experienced workers 55 years of age and older.

(B) The House bill also revises the findings of current law to place greater emphasis on adults who have less education, training, or skills and are disproportionately employed in low-wage occupations.

Senate recedes.

(C) The House bill refers to those persons as "individuals" and does not specify them as "women".

Senate recedes.

(D) The House bill deletes the listing of adults unable to benefit because of their limited English proficiency.

House recedes.

(E) The House bill adds "education and training programs, especially . . ."

The Senate amendment retains current law on these items.

Senate recedes.

128. The House bill, but not the Senate amendment uses "current" rather than "urgent" to describe needs to be met.

Senate recedes.

129. The House bill, but not the Senate amendment, deletes the clause listing populations with special needs.

Senate recedes with an amendment to include workers 55 years and older.

130. The House bill, but not the Senate amendment, adds the requirement of a board established to be the "grant recipient and catalyst to public-private training partnership".

Senate recedes.

131. The House bill adds the following new requirements to current law:

(1) that awards be limited to educational institutions which link up with private companies to train people for jobs in high-growth fields according to criteria developed by the State board of vocational education;

Senate recedes.

(2) that business be involved in the planning and operation of these programs; and

Senate recedes.

(3) that the private sector match 50% of the costs.

Senate recedes.

132. The House bill also specifies that this training may include entry-level training, customized training, retraining, and employee upgrading. The Senate amendment keeps current law.

Senate recedes.

133. The House bill deletes:

(A) the provision in current law listing the types of adults who are eligible to participate in this program and

Senate recedes.

(B) short-term training programs as an authorized activity. The Senate amendment keeps current law on both.

Senate recedes.

134. The House bill deletes an illustrative reference in current law to apprenticeship training programs, while keeping apprenticeship training as an item in the list of authorized activities. The Senate amendment retains current law.

Senate recedes.

135. The House bill deletes one of the authorized activities in current law (and in the Senate amendment)—building linkages between vocational education and the private sector—and replaces it with an authorized activity permitting shared programs between education institutions and businesses involving work experience.

Senate recedes.

136. The House bill, but not the Senate amendment, deletes the following Part C activities authorized in current law: curriculum development, acquisition of equipment, personnel training, use of funds to keep facilities open longer, meeting the costs of serving adults in other programs, and other related services as in (H) and (I).

Senate recedes.

137. The House bill requires the "active participation" of public and private sector

employers; current law (and the Senate amendment) requires the "close cooperation and participation" of such employers and agencies.

Senate recedes.

138. The Senate amendment, but not the House bill, adds a new section to current law: (1) specifically allowing funds to be used for vocational training and retraining in high technology occupations or to meet the technological needs of other industries; and (2) giving special consideration in such training to individuals 55 or older.

Senate recedes.

139. The House bill authorizes $50 million for FY 88 and such sums for the 5 following fiscal years for this program. The Senate amendment authorizes an additional $15 million for FY 88 and for FY 89 for workers described in 322(c).

The Senate recedes with an amendment authorizing $25 million for this new program and authorizing $15 million for the current adult training program, both of which are to expire in 1989 to conform with the Vocational Education Act.

140. The House bill, but not the Senate amendment, amends the authorized activities under the Title II basic grant program of the Perkins Act to add two new activities:

A. pre-employment skills training and

Senate recedes.

B. school-to-work transition programs.

Senate recedes.

141. The House bill, but not the Senate amendment, adds a new provision to require the Secretary to use an unspecified portion of the national program funds under the Perkins Vocational Education Act to conduct a demonstration program for secondary school students, intended to provide those students with career education work experience through partnership arrangements with the private sector.

Senate recedes.

142. The House bill amends Title III, Part E of the Perkins Act (the Industry-Education Partnerships for High Technology Training program) to authorize $50 million for FY 88 and such sums for FY 89. The Senate amendment authorizes an additional $10 million for each of the fiscal years 1988 and 1989 for Part E, for workers described in the new 343(d). (The current law authorizes such sums for both years.)

House recedes.

143. Unlike the House bill, the Senate amendment amends Part E of the Perkins Act to authorize the use of Part E funds for providing vocational education in high technology occupations or to meet the technological needs of other industries.

House recedes with an amendment permitting use of industry-education partnership funds for programs of entry into, retraining in, or advancement in high technology industries, especially for those 55 years of age or older.

144. The Senate amendment, but not the House bill, requires special consideration be given to persons aged 55 or older.

See above.

145. Unlike the Senate amendment, the House bill authorizes new demonstration programs, to be conducted in vocational training centers and community colleges, to provide basic skills to students to make them technologically literate. The authorization for this program is $2 million for FY 88 and such sums for FY 89.

Senate recedes,

146. The House bill, but not the Senate amendment, authorizes $5 million for FY 88 and such sums for fiscal years 1989-91 for "Access Demonstration Programs," a new program of grants in the Department of Education to educational research laboratories, to train secondary school personnel, including guidance counselors. The purpose of this program is to increase the educational opportunities for secondary students in rural areas.

Senate recedes with an amendment authorizing the program through fiscal 1991 and modifying the list of eligible institutions to include: institutions of higher education, private non-profit agencies and organizations (including regional educational laboratories, public agencies, state educational agencies, or combinations of such agencies or institutions within particular regions of the United States, and an amendment to change the reporting date to November 30, 1989.

147. The Senate amendment, but not the House bill, authorizes $400 million for FY 88 for a new program under Chapter 1 of ECIA. This program would provide grants to local educational agencies for secondary school compensatory basic skills improvement activities for disadvantaged students. These programs would be held to certain standards of evaluation and programmatic success.

House recedes with an amendment authorizing two separate national demonstration programs (dropout prevention and secondary basic skills) for fiscal 1988 with an authorization of $50 million for dropout prevention and $200 million for secondary skills.

148. The Senate amendment includes a technical amendment for the drug-free schools program. The amendment authorizes State educational agencies to distribute funds for use among areas served by local or intermediate educational agencies or consortia on the basis of the relative enrollments in public and private, non-profit schools.

The House bill does not contain a comparable provision.

House recedes.

149. The Senate amendment provides that this act shall take effect October 27, 1986.

The House bill does not contain a comparable provision.

The Senate amendment authorizes State educational agencies to allot FY 1987 funds to local and intermediate educational agencies and consortia, under section 4124(a) of the Drug Free Schools and Communities Act of 1986 on the basis of their relative numbers of children in the school-aged population.

House recedes,

150. The Senate amendment authorizes $3 million for FY 88 and for research to evaluate, and collect information on the education of gifted and talented children and youth. This center would make grants to or contracts with higher education institutions, State educational agencies or consortia of both. The House bill contains no such provision.

Senate recedes.

2. Section 572 of the bill amends Title VII of the HEA by adding a new part J, the "Agriculture, Strategic Metals, Minerals, and Forestry College and University Research Facilities and Instrumentation Modernization Program" (hereafter referred to as the "Priority program").

The Senate bill has no comparable provision.

Senate recedes with an amendment adding "Oceans" to the title of the program.

(a) It is the purpose of this program to assist institutions that specialize in agriculture, strategic metals and minerals, forestry and wood products research (hereafter referred to as specialized areas) in upgrading, modernizing, and replacing research facilities, equipment, and instrumentation used in the above mentioned areas of specialization.

The Senate bill has no comparable provision.

Senate recedes with an amendment adding "Oceans" and inserting the following sentence after the phrase "forestry research": "None of these funds will be available for the construction of new facilities.".

(b) The Secretary shall establish and carry out a Priority Program from funds available in any fiscal year.

The Senate bill has no comparable provision.

Senate recedes.

(c) The Priority Program shall be carried out through a competitively awarded, grants program to assist institutions in upgrading research facilities, equipment, and instrumentation. The Secretary shall consult with the Secretaries of Agriculture, Interior, and Energy in the development of regulations, award criteria, and final proposal funding.

The Senate bill has no comparable provision.

Senate recedes with an amendment which will include the Department of Commerce. The amendment also deletes the word "modernization" and substitutes the phrase "repair and renovation".

(d) Participating institutions shall provide 50 percent of the costs involved from nonfederal or private sources. The Senate bill has no comparable provision.

Senate recedes.

(e) Selection criteria shall include:

(1) the quality of research or training to be carried out in the facility;

Senate recedes.

(2) congruence with the institutions' research activities and the research needs of the nation:

Senate recedes.

(3) contribution towards meeting national, regional, and State research activities; and

Senate recedes.

(4) the age and condition of existing facilities. The Senate bill has no comparable provisions.

Senate recedes.

(f) At least 20 percent of the funds available under this program shall be directed to institutions that receive less than $10,000,000 in Federal research and development activities in each of the previous two years.

The Senate bill has no comparable provision.

Senate recedes.

(g) In developing regulations and conducting this program the Secretary shall consult with other federal agencies concerned with research including the Departments of Agriculture, and Energy, and Interior.

The Senate bill has no comparable provision.

Senate recedes with an amendment which includes the Department of Commerce.

(h) The Priority program is authorized at $20,000,000 for fiscal year 1988 and such sums thereafter.

The Senate bill has no comparable provision.

Senate recedes with an amendment authorizing the program at $10 million for FY 1988 and such sums thereafter.

3. Section 573 of the bill amends Section 971 of title IX of HEA by:

(a) Clarifying the statutory language regarding the funding restrictions on Parts A and D; and

House recedes.

(b) Adding a new subsection to provide additional appropriations to encourage increased participation in graduate research training. The new subsection:

(1) Authorizes an additional $5,000,000 in fiscal year 1988 and such sums for the three succeeding years for Part A, Grants to Institutions to Encourage Minority Participation in Graduate Education.

House recedes.

(2) Authorizes an additional $4,000,000 in fiscal year 1988 and such sums for the three succeeding years for Part B, Patricia Roberta Harris Fellowships.

House recedes.

(3) Authorizes an additional $5,000,000 in fiscal year 1988 and such sums for the three succeeding years for Part D, Graduate Assistance in Areas of National Need.

The Senate bill has no comparable provisions.

House recedes.

4. Section 574 of the bill amends Section 607 of title VI of the HEA by adding a new subsection (e) to include Foreign Technical and Scientific Periodicals. The new subsection:

(1) Authorizes $1,000,000 in fiscal year 1988 and such sums for the succeeding three years to provide assistance in acquiring and providing access to foreign technical and scientific periodicals.

The Senate bill has no comparable provisioni.

House recedes.

(2) Provides that the Secretary shall provide for the acquisition and translation of technical and scientific journals published outside the United States and shall disseminate the translated documents to libraries, businesses, professional societies, and postsecondary institutions.

The Senate bill has no comparable provision.

House recedes.

(3) Provides that the Secretary shall consult with other departments and agencies of the federal government, businesses, and professional societies in determining which documents may be of value to the Federal Government, businesses, and researchers.

The Senate bill has no comparable provision.

House recedes.

5. Section 575 of the bill amends Section 1047 of Title X of the HEA by adding a new subsection authorizing an additional $10,000,000 for FY 1988 and such sums for the three succeeding years to fund new activities which are aimed at increasing the participation of minorities in scientific and engineering research careers.

The Senate bill has no comparable provisions.

Senate recedes with an amendment setting the additional authorization at $7.5 million and deleting the sentence, "In awarding funds appropriated under this subsection the Secretary shall not limit the awards on the basis of any criteria listed in Section 1022(b) of this title."

6. Section 575A of the bill amends title XII of HEA by adding a new section to include Technology Transfer Centers. The new seciton:

(a)(1) Authorizes $25,000,000 for fiscal year 1988 and such sums for each of the three succeeding years to develop, construct, and operate regional technical transfer centers to:

Senate recedes with an amendment authorizing $15 million for FY 1988 and such sums for the three succeeding years, of which the first $3 million appropriated shall be available for the training technology transfer program.

The Conferees intend that the technology transfer centers be encouraged to link through a national network to facilitate the transfer of technology throughout the various centers.

(A) Promote programs that further the transfer of technology relevant to a region's economy;

Senate recedes.

Develop incubator facilities for new economic initiatives;

Senate recedes.

(C) Provide technicial assistance to solve problems associated with technology transfer and start-up business;

Senate recedes.

(D) Consider the rural and urban needs for economic development with a region.

The Senate bill has no comparable provisions.

Senate recedes.

(2) Regional Technology Transfer Centers are authorized to:

(A) Build on or develop links to industrial users;

Senate recedes.

(B) Build on or develop necessary computer networks and databases;

Senate recedes.

(C) Utilize or develop regional or national libraries. The Senate bill has no comparable provisions.

Senate recedes.

(b) Awards shall be made on a competitive basis to new or pre-existing centers.

The Senate bill has no comparable provision.

Senate recedes.

(c) Each center shall be operated by a regional institution or consortium of institutions. Where necessary, Affiliate Centers can be established at institutions in other States.

The Senate bill has no comparable provision.

Senate recedes with an amendment including in subsection (c) university-related research park or center.

(d) Institutional applications must show:

(1) How the center will facilitate the regional economy;

Senate recedes.

(2) How the center's mission is compatible with the economic development plans for the States in the region;

Senate recedes.

(3) That the plan was developed in consultation with appropriate state agencies.

The Senate bill has no comparable provisions.

Senate recedes.

(e) Centers can be operated by institutions in consortia with existing campus facilities, other State and local agencies, non-profit agencies and interstate higher education institutions. The Secretary shall develop methods to assess the percentage of operating costs.

The Senate bill has no comparable provision.

Senate recedes with an amendment including in subsection (e) research park or center and also including solar renewable energy research facilities, high technology facilities, and manufacturing technology research facilities.

(f) Each Center shall establish a policy board. Such board shall be:

(1) representative of the State of the region; and

(2) representative of urban and rural areas, ethnic concerns, business, labor and education.

The Senate bill has no comparable provisions.

Senate recedes.

(g) Each center will be funded for five years with recompetition to occur before the fifth year. For the fourth and fifth years and any years funded thereafter, the Center will match federal funds with nonfederal funds on a 50/50 basis.

The Senate bill has no comparable provision.

Senate recedes.

(h) The Affiliate Centers will be funded by the Regional Centers and by the institutions at which they are located, with funding levels to be set by the two entities.

The Senate bill has no comparable provision.

Senate recedes.

(i) After consulting with the Departments of Agriculture, Energy, Commerce, and Interior the Secretary shall propose a list of priorities for the Centers, and shall propose their regional composition.

The Senate bill has no comparable provision.

Senate recedes with an amendment in subsection (i) that a region may also be a State or a portion of a State's geographic area.

7. Section 575B of the bill amends Title V of HEA by adding a new part F, the "National Advisory Council on Instructional Technology" (hereafter referred to as the Council).

The Senate bill has no comparable provision.

House recedes.

(a) It is the purpose of the Council to provide for the future development of instructional technology as a resource for rural and urban schools. Members shall be appointed by the Secretary and shall include:

House recedes.

(1) representatives from leading higher education institutions in the field of instructional technology;

House recedes.

(2) representatives from the nine federal educational laboratories;

House recedes.

(3) representatives from the Centers, especially those with expected telecommunications facilities, rural and urban State officers, members of the hardware and software industries and national organizations of teachers;

House recedes.

(4) others, as determined by the Secretary, who will make a positive contribution to the Council.

The Senate bill has no comparable provisions.

House recedes.

(b) $300,000 is authorized for fiscal year 1988 and such sums as may be necessary for the succeeding three years to provide for the expenses of the Council.

The Senate bill has no comparable provision.

House recedes.

(c) The Council shall establish guidelines and an agenda for the development of educational telecommunications technology software to satellite down-link equipment for rural and urban schools with special care given to avoiding duplication of existing programing. The Council shall also develop a basis for insterstate cooperation on accreditation of rural school programming

since programming transcends State boundaries.

The Senate bill has no comparable provision.

House recedes.

(d) As established by the Council, the agenda will outline the needs and methods for developing programming for rural and urban schools.

The Senate bill has no Comparable provision.

House recedes.

8. Section 575C of the bill amends section 201(b) of the HEA amended to authorize an additional $5,000,000 for Part D, College Library Technology and Cooperation Grants, for fiscal year 1988 and for such sums in the three succeeding years.

The Senate bill has no comparable provision.

Senate recedes with an amendment setting this additional authorization at 2.5 million for fiscal 1988 and such sums thereafter.

9. Section 576 of the bill creates a new grants program for mid-career teacher training programs. The new program provides that:

(a) The Secretary shall make grants to institutions to establish and operate programs to provide mid-career teacher training to individuals who:

(1) hold a baccalaureate or advanced degree in an education related field, particularly mathematics, science or a foreign language and have job experience in such a field; or

(2) hold a baccalaureate or advanced degree and were formerly employed in an occupation in which they developed expertise in an education-related field, including mathematics, science, or a foreign language.

The Senate bill has no comparable provisions.

House recedes.

(b)(1) The Secretary shall award grants on a competitive basis. Institutions selected as recipients shall be awarded:

(A) an initial planning grant for use during the first two fiscal years after selection;

House recedes.

(B) for those institutions demonstrating success with the planning grant, a renewal grant for use during not more than two additional years following the date of expiration of the planning grant;

House recedes.

(C) for those institutions demonstrating success with planning and renewal grants, a continuation grant for not more than $50,000 per year.

The Senate bill has no comparable provisions.

House recedes.

(2) A continuation grant cannot be awarded unless the institution agrees to provide funding for the program for which the grant is received.

(A) For the first year, 33 and ⅓ percent of the amount of the continuation grant; and

House recedes.

(B) For each succeeding year for which a continuation grant is received, 50 percent of the amount of the continuation grant.

The Senate bill has no comparable provisions.

House recedes.

(c) The Secretary shall appoint a panel of experts in teacher training to review applications.

The Senate bill has no comparable provision.

House recedes.

(d) To the extent that funds are available, the Secretary shall select one applicant from each region served by the Department of Education where there is a qualified applicant.

The Senate bill has no comparable provision.

House recedes.

(e) The Secretary shall evaluate applications on the basis of an applicant's ability to establish and maintain a program of mid-career teacher training. Such a program shall meet the following requirements:

(1) The admissions process will be designed to admit individuals who possess the knowledge base and the characteristics to be good teachers.

House recedes.

(2) A clear set of goals and expectations shall be communicated to the participants.

House recedes.

(3) The program curriculum shall provide applicants with skills and credentials as well as a realistic perspective on the education process.

House recedes.

(4) The program shall be developed in cooperation and with the assistance of the local business community.

House recedes.

The program shall operate cooperatively between the institution and one or more State or local educational agencies.

House recedes.

(6) Active classroom teachers shall participate in the design and operation of the program, which will include in-service training and follow-up assistance.

The Senate bill has no comparable provisions.

House recedes.

10. (a) Section 577 of the bill authorizes an initial planning grant that shall not exceed $100,000 for the two year grant period.

The Senate bill has no comparable provision.

House recedes.

(b) a renewal grant shall not exceed $50,000 for each of the two year award period. The Senate bill has no comparable provision. No comparable provision.

House recedes.

11. (a) Section 578 of the bill requires that institutions who are awarded grants shall submit to the Secretary such reports as deemed necessary by the Secretary.

The Senate bill has no comparable provision.

House recedes.

(b) The Secretary shall disseminate information received regarding awarded programs to other institutions for the purpose of promoting the greater use of mid-career teacher training programs.

The Senate bill has no comparable provision.

House recedes.

12. Section 579 of the bill authorizes $4,000,000 in fiscal year 1988, and such sums as may be necessary in each of the three succeeding years.

The Senate bill has no comparable provision.

House recedes.

13. Section 581 of the bill authorizes the Secretary to make grants to institutions or consortia (hereafter referred to as "institutions") to:

(1) Establish and operate a summer institute or workshop for intensive training in foreign languages and cultures, as provided for under Section 584 of the bill.

House recedes.

(2) Acquire special equipment for undergraduate instruction in mathematics and/or science and to provide workshops for teachers and faculty on using such equipment as provided for under Section 586 of the bill.

House recedes.

(3) Establish and operate educational partnership programs between institutions of higher education and local educational agencies to provide advanced instruction to students in mathematics, science, and computer technology as provided for under Section 585 of the bill.

House recedes.

(4) Perform a combination of activities referred to in paragraphs 1 or 3 above.

The Senate bill has no comparable provisions.

House recedes.

14. Section 582 of the bill provides that:

(a) The Secretary shall make the selection of grant recipients on a competitive basis.

The Senate bill has no comparable provision.

House recedes.

(b) The Secretary shall award grants on a competitive basis, considering the quality of the application submitted under Sec. 583 (Applications) of the bill.

The Senate bill has no comparable provision.

House recedes.

(c) In awarding grants, the Secretary shall ensure that:

(1) 50 percent of the funds shall be used for summer institutes and workshops (Sec. 584) and educational partnerships (Sec. 586). The balance shall be used for the aquisition and use of equipment (Sec. 585);

House recedes.

(2) There will be an equitable geographic distribution of funds; and

House recedes.

(3) Awards shall not be less than $100,000 or greater than $500,000.

The Senate bill has no comparable provisions.

House recedes.

15. Section 583 of the bill provides that applications submitted to the Secretary shall contain:

(1) a description of activities that will be performed in accordance with Sections 584, 585, 586, or any combination;

House recedes.

(2) assurances that 50 percent of the cost of the program will be obtained from nonfederal sources unless waived by the Secretary;

House recedes.

(3) a description of resources available to meet the matching requirement; and

House recedes.

(4) such additional information as the Secretary may require. The Senate bill has no comparable provisions.

House recedes.

16. Section 584 of this bill

(a) Authorizes the use of funds for:

(1) summer institutes in intensive foreign language training and cultures. Eligible participants include:

(A) secondary and postsecondary students;

House recedes.

(B) language teachers and faculty;

House recedes.

(C) individuals, to develop a level of proficiency that would allow transaction in international business; and

House recedes.

(D) American international businesspersons, to improve their effectiveness in transacting business abroad.

The Senate bill has no comparable provisions.

House recedes.

(2) intensive workshops for pre in-service teachers to demonstrate recent developments in science, technology, and mathematics.

House recedes.

(3) Provides stipends for secondary and postsecondary students and language teachers and faculty.

The Senate bill has no comparable provision.

House recedes.

(b) Institutions are authorized and encouraged to provide such training activities in a foreign country.

The Senate bill has no comparable provision.

House recedes.

(c) Institutions are authorized and encouraged to involve units of State and local government, labor, business, and industry.

The Senate bill has no comparable provision.

House recedes.

17. Section 585 of the bill provides that funds be made available for:

(1) the purchase of equipment for use in undergraduate mathematics and/or science instruction.

House recedes.

(2) workshops for teachers and faculty on the use of such equipment.

The Senate bill has no comparable provision.

House recedes.

18. Section 586 of this bill provides for:

(a) The use of funds for costs associated with educational partnerships between institutions of higher education and local agencies to provide advanced instruction in mathematics, science, and computer technology.

The Senate bill has no comparable provision.

House recedes.

(b) Specific uses include:

(1) costs of entering into business resource sharing with government, private business, industry, and institutions;

House recedes.

(2) stipends for faculty and staff involved in the program;

House recedes.

(3) development of curriculum to provide superior preparation in mathematics, science and for technology;

House recedes.

(4) acquisition of instructional materials; and

House recedes.

(5) additional student transportation costs.

The Senate bill has no comparable provisions.

House recedes.

(c) Funds awarded under this section cannot be used in connection with general overhead costs of the applicant.

The Senate bill has no comparable provision.

House recedes.

19. Section 587 of this bill authorizes $10,000,000 in fiscal year 1988 and such sums as may be necessary in each of the three succeeding years to carry out the provisions of this chapter.

The Senate bill has no comparable provision.

House recedes.

20. Section 601 of the Senate bill amends Title VI of the HEA to:

(1) redesignate sections 612 and 613 as sections 613 and 614.

The House bill has no comparable provision.

House recedes.

(2) And, adds a new Section 612, Centers for International Business Education (hereafter referred to as the "Centers").

The House bill has no comparable provision.

House recedes.

(A) The Secretary is authorized to make grants to institution(s) for planning, establishing, and operating centers for international business education.

The House bill has no comparable provision.

House recedes.

(1) The Centers will serve as a national resource to improve business education by emphasizing the international context in which business is transacted.

The House bill has no comparable provision.

House recedes.

(2) The Centers will provide intensive instruction in languages and cultures critical to understanding U.S. trading partners.

The House bill has no comparable provision.

House recedes.

(3) The Centers will provide training to students in the international aspects of trade, commerce, and related fields of study. They shall also serve as resources to business by providing programs and research designed to meet the needs of international business.

The House bill has no comparable provision.

House recedes.

(B) Each grant made under this section will pay the Federal cost of planning, establishing, or operating a Center, including:

(1) faculty and staff travel;

(2) teaching and research materials;

(3) curriculum planning and development;

(4) visiting faculty and scholars;

(5) staff training and improvement.

The House bill has no comparable provisions.

House recedes.

(C)(1) Center programs and activities shall include:

(A) interdisciplinary international studies that incorporate business related studies;

House recedes.

(B) interdisciplinary programs that provide business-related studies for international and foreign language faculty and advanced degree candidates;

House recedes.

(C) evening or summer programs, not limited to foreign language, to improve the international business skills of the business community;

House recedes.

(D) collaborative programs involving institutions, educational agencies, professional societies, and businesses to develop international skills and awareness for the members of the business community;

House recedes.

(E) research designed to strengthen and improve the international aspects of business and to promote integrated curricula;

House recedes.

(F) research designed to improve the international competitiveness of the American business community, including those who are not yet involved in international trade.

The House bill has no comparable provisions.

House recedes.

(2) Center programs and activities can include:

House recedes.

(A) establishment of overseas programs for faculty and students;

House recedes.

(B) other activities deemed eligible by the Secretary.

The House bill has no comparable provision.

House recedes.

(d)(1) In order to be eligible for assistance, an institution(s) shall establish an advisory council which will conduct extenstive planning (hereafter referred to as "the Council".)

House recedes.

The House bill has no comparable provision.

(2) The Council shall include:

(A) a representative from the institution.

(B) a representative from the business or management faculty.

(C) a representative from the foreign language or international studies faculty.

(D) one representative from another professional school or department at the institution.

(E) one or more representatives from local business.

(F) one representatives appointed by the Governor, whose responsibilities include oversight of State-sponsored trade-related activities.

(G) other representatives as the institution deems appropriate.

The House bill has no comparable provisions.

House recedes.

(3) The Council shall meet at least once each year, to assess and advise the Center on its activities. The House bill has no comparable provision.

House recedes.

(e)(1) The Secretary shall make grants for a minimum of three years. The House bill has no comparable provision.

House recedes.

(2) The Federal share shall be:

(A) not more than 90 percent in the first year;

(B) not more than 70 percent of the second year; and

(C) not more than 50 percent of the third year;

The House bill has no comparable provisions.

House recedes.

(3) The non-Federal share may be provided in cash or in-kind assistance. The House bill no comparable provision.

House recedes.

(f)(1) Grants shall be made on such conditions as the Secretary deems necessary. Such conditions shall include:

House recedes.

(A) evidence that the institution will conduct extensive planning prior to the establishment and in the design of the programs.

House recedes.

(B) assurance of on-going collaboration with the faculties of business, management, foreign language, and international studies, and other appropriate professional schools.

House recedes.

(C) assurances that programs will be open to students in these respective areas.

House recedes.

(D) assurances that the institution will use these funds to supplement and not supplant on-going similiar activities.

The House bill has no comparable provisions.

House recedes.

21. (a) Sec. 602 of the Senate bill authorizes $10,000,000 for fiscal year 1988 and for

each of the three succeeding years to carry out the provisions of section 612 (Centers of International Business).

House recedes.

21. (b) $5,000,000 is authorized for fiscal year 1987 and such sums as may be necessary in each of the four succeeding years to carry out the provisions of section 613.

The House bill has no comparable provision.

Senate recedes.

22. Sec. 603 of the Senate bill amends section 613 of the HEA by striking out "part" each time it appears, and inserting, "section".

The House bill has no comparable provision.

House recedes.

23. (a) Sec. 611 of the Senate bill amends section 417D(d)(C) of the HEA (the Ronald E. McNair Post-Baccalaurate Achievement programs). The amendment raise the amount of funding for projects under this program to $5 million annually if the annual appropriation for the Trio programs equals or exceeds $176 million.

House recedes setting the trigger at $215 million.

24. (a)(1) Sec. 2821 of the Senate bill amends section 428(b)(1)(H) of the HEA (Insurance program agreements) to provide for the collection of a single insurance premium:

Senate recedes.

(i) which shall be applied uniformly to all loans guaranteed; and

Senate recedes.

(ii) is not less than .5 percent nor more than 3 percent. In the case of a multi-state guarantor, the premium may be set for each state for which the guarantor has received advances, with a single rate being set for the balance of activity.

The House has no comparable provisions.

Senate recedes.

(2) Section 428(b)(1) of the HEA is further amended redesignating paragraph U as V and by adding the following new paragraph U that provides guarantors, after a 60 day notice, to cease to guarantee loans for students at otherwise eligible institutions if the cumulative default rate of the loans from such an institution in repayment exceeds 25 percent of the amount insured by the guarantee agency that holds the preponderance of the value of the loans outstanding at such an institution, unless the guarantor is the designated guarantor for the State and serves as the leader of last resort.

The House bill has no comparable provision.

Senate recedes.

(b)(1) The amendments made by subsection (1) (uniform premium) are effective 30 days after enactment of the bill.

The House bill has no comparable provision.

(2) The amendments made by subsection (2) (cease to guarantee loans) are effective 90 days after the enactment of the bill.

The House bill has no comparable provision.

Senate recedes.

25. Sec. 2822 of the Senate bill amends section 25 of the Higher Education Technical Amendments Act of 1987 by: striking out "Section 1703" and inserting "Section 1705(b)(3)."

The House bill has no comparable provision.

House recedes.

The following sections of the Senate bill were not included in the side-by-side, but were considered by the Conferees and agreed to as follows:

Section 2305

Senate recedes.

Sections 2501 and 2502

Technical

Section 2405

House recedes.

Section 3251

House recedes with an amendment excluding the Literacy Corps from this provision.

Section 3252

House recedes.

SUBTITLE D—EMPLOYMENT AND TRAINING FOR DISLOCATED WORKERS

SHORT TITLE (SEC. 301 IN HOUSE BILL; SEC. 2201 OF SENATE AMENDMENT

House bill

Worker Readjustment Act.

Senate amendment

Economic Dislocation and Worker Adjustment Assistance Act.

Conference agreement

The House recedes.

A.—Amendment to Title III of Job Training Partnership Act

Both the House bill and the Senate amendment expand and restructure the existing Title III of the Job Training Partnership Act with a new set of provisions dealing with dislocated workers. However, there are significant differences in the structures of the House and Senate versions. The House bill establishes separate funds for readjustment and retraining services. The Senate amendment distributes a single set of funds to the states, though it contains certain requirements on how states and substate areas must allocate those funds.

The requirement in current law that states match some or all of the funds made available to them under Title III was not included in either the House bill or the Senate amendment, and is not included in the Conference agreement.

1. FINDINGS AND STATEMENT OF PURPOSE (SECS. 302 AND 303 IN THE SENATE AMENDMENT)

Present Law

No special findings or statement of purpose for Title III.

House bill

No provision.

Senate amendment

The Senate amendment states findings of Congress: the ability of the United States economy and U.S. workers to move quickly and effectively to new jobs is a strong competitive asset that should be supported and enhanced; some plant closings and permanent layoffs are inevitable in a healthy, competitive economy; the loss of experienced employees from the workforce weakens overall productivity in the United States; it is in the national interest to foster reemployment of workers who have been permanently displaced; technical assistance must be made available at the local level to help employers resolve their human resource problems and remain economically viable; fully meeting the needs of dislocated workers and impacted communities can only be accomplished in an economy that is providing an adequate number of jobs.

With respect to worker adjustment, the Senate amendment stated further findings: adjustment efforts should begin in advance of a plant closing or mass layoff, thus minimizing disruption in workers' lives; time for research and planning is necessary and, therefore, advance notification is an essential component of a successful adjustment program; adjustment is best accomplished by those directly involved, preferably through publicly supported labor-management committees that engage in private adjustment measures; dislocated workers often do not receive good information about the jobs and wages available in local and neighboring labor markets; dislocated workers need effective assessment, testing, and vocational counseling, which should include an individual readjustment plan as the key to occupational change; and the job search assistance currently provided to dislocated workers is uneven in quality and availability.

The Senate amendment stated that the purpose of this title is to: enhance the international competitiveness of the American economy; facilitate the return of dislocated workers to productive employment; establish the earliest possible readjustment capacity for workers and firms in each state; provide comprehensive coverage to workers regardless of the cause of their dislocation; emphasize training and reemployment rather than income support; provide early referral from the unemployment compensation system to adjustment services; offer broad flexibility at the Federal, state, and local levels to try new approaches, as well as to use approaches that have proven to be effective in helping different types of dislocated workers; and promote management, labor, and community partnerships with government in addressing worker dislocations.

Conference agreement

The Senate recedes. However, the Conferees reaffirm these findings and purposes, with the intent of providing a better understanding of the legislation.

2. CARRYOVER OF FUNDS (SEC. 302(B) IN HOUSE BILL; SEC. 314(C) IN SENATE AMENDMENT)

Present law

Under present law, the Secretary may reallot any amount of any allotment to a state to the extent that the Secretary determines that the state will not be able to obligate such amount within one year of allotment.

House bill

The House bill allows appropriations for a given fiscal year to remain available for obligation during the next fiscal year.

Senate amendment

The Senate amendment allows no more than 20 percent of funds allocated to the the state to remain available for obligation and expenditure during the next fiscal year.

Conference agreement

The House recedes.

3. ALLOCATION OF FUNDS (SEC. 302(C), 332 OF HOUSE BILL; SEC. 313 OF SENATE AMENDMENT)

Present law

The Secretary may reserve up to 25 percent of the amount appropriated to carry out Title III for distribution by the Secretary to the states for services to dislocated workers. The Secretary shall establish criteria for awarding assistance from such reserved funds. The remaining 75% shall be allotted among the states as follows: one third alloted among the states on the basis of the relative number of unemployed individuals who reside in each state; one third on the basis of the relative excess number of unemployed individuals who reside in each state ("excess number" being defined as those in excess of 4.5 percent of the civil-

ian workforce); and one third on the basis of the relative number of individuals who have been unemployed for fifteen weeks or more and who reside in each state.

In order to qualify for assistance under Title III, each state must demonstrate that it will expend funds for dislocated worker activities that have been raised from public or non-Federal private sources and that at least equal the amount made available under the formula allocation. This matching requirement is reduced where a state has a higher than average rate of unemployment.

House bill

The House bill allots appropriations so that 30 percent is available to states for their delivery systems, including rapid response and basic readjustment services; 50 percent is available in a special fund for retraining services; and 20 percent is available for Federal readjustment services.

The House bill retains the formula in present law for alloting funds to the states, for use in alloting the 30 percent for state delivery systems, except that the bill further requires that as soon as satisfactory data are available, the Secretary shall allocate 25 percent of the funds according to data on plant closings and permanent layoffs and farmer and rancher dislocation, and reduce the amount allocated on the basis of the present factors from one-third for each factor to one-fourth for each factor.

The House bill further allows governors to retain no more than 10 percent of the 30 percent share alloted for basic readjustment services for state-level administration, state council staff, technical assistance, coordination, and rapid response activities. Governors may retain an additional 10 percent for discretionary use on any allowable basic readjustment service for readjustment training. Remaining funds must be allocated among substate areas according to a formula prescribed by the governor, but which may not be amended more than once a year.

Senate amendment

The Senate amendment allocates appropriations so that 75 percent is available to the states for rapid response services, retraining, and basic readjustment services; and 25 percent is available for Federal readjustment services. Not more than $2.5 million of the amounts available for federal readjustment services shall be allocated among the Commonwealth of the Northern Mariana Islands and the other territories and possessions of the United States.

The Senate amendment uses the formula in present law for alloting funds among the states. The Senate amendment further directs the Secretary to report to Congress on the advisability of alloting 25 percent of funds according to data on plant closings and permanent lay-offs within thirty days after such data become available.

The Senate amendment further requires governors to allocate at least 50 percent of funds among substate areas after considering all appropriate information pertaining to the state's worker adjustment needs, including but not limited to the factors listed in the House bill. The remainder of a state's allotment shall be retained by the governor for state administration, technical assistance, coordination of the programs authorized under this title; statewide or industry-wide projects; rapid response activities; establishment of linkages between the unemployment compensation system and the worker adjustment system; and discretionary allocation for basic readjustment and retrainings services for areas that experience substantial increases in the number of dislocated workers. These discretionary allocations may be used to supplement the activities of substate grantees where increased or unanticipated dislocation occurs and warrants additional funding from the state. The governor also may provide discretionary funds for substate outreach efforts.

Conference agreement

The Conference agreement allocates 20 percent of the appropriations for Federal readjustment services and 80 percent for state readjustment services. It also provides that not less than 50 percent of the funds allocated to any substate grantee shall be expended for retraining services.

The agreement follows present law with respect to the formula for allotment of funds for state readjustment services among the states. The Conference agreement follows the House bill's provision on changing the allotment formula as soon as satisfactory data are available on plant closings and permanent layoffs, and farmer and rancher dislocation. The Conferees understand that the data on plant closings and permanent layoffs will be available sooner than data on dislocated farmers and ranchers. The Conferees intend that the fourth factor be included in the allotment formula when the closings and layoffs data is available, even if the farmer and rancher data is not yet available at that time.

The Conference agreement specifies that the governor be able to retain no more than 40 percent of a state's allotment for statewide dislocated worker activities. The list of these activities generally follows the Senate amendment. The governor also may withhold an additional 10 percent of a state's allotment at the beginning of the program year, so long as this amount is distributed on the basis of need to substate areas during the first nine months of the program year. The conferees emphasize that, if this additional 10 percent is retained by the governor at the outset of the program year, that amount is to be distributed to the substate areas in a timely fashion to supplement the funds already allocated for substate readjustment activities. The Conference agreement follows, with two exceptions, the House bill with respect to the manner in which the governor must allocate funds among the substate areas. The first exception is that the governor must allocate funds to "substate areas," rather than to "all substate areas." Second, the formula for allocation "shall" (rather than "may") include the factors listed in the House bill.

The remaining 50 percent of the state's allotment must be distributed to the substate grantees by a formula developed by the governor. The Conferees intend that none of the additional 10 percent funds retained at the beginning of the program year be used for state-wide activities, including rapid response or state administrative functions. The Conferees wish to make absolutely clear that this additional 10 percent be distributed to the substate grantees.

The Conferees wish to clarify that the governor must use the six-factors listed in section 302(d) to develop the substate allocation formula. No weighting factors are provided in the law, and the governor may use other factors in the development of the allocation formula.

Governors are encouraged to use the most appropriate data available. The Conferees do not intend, however, that the cost of this data collection become prohibitive. Therefore, if data already exist that reflect the formula needs, new data need not be collected to meet the requirements of this provision.

4. ELIGIBLE DISLOCATED WORKER (SEC. 303(a) IN HOUSE BILL; SEC. 301(1) IN SENATE AMENDMENT)

Present law

Present law defines eligible dislocated workers to include individuals who (1) have been terminated or laid off or have received a notice of termination or layoff and are eligible for or have exhausted unemployment compensation, (2) have been terminated as a result of a permanent closure of a plant, (3) are long-term unemployed with limited opportunities for reemployment in the same occupation, or (4) have been self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community or because of natural disasters. Present law further specifies that a state may serve any eligible individual without regard to the residence of that individual.

House bill

The House bill generally follows present law, with two exceptions. First, the House definition includes workers terminated as a result of a substantial layoff. Second, the House bill specifies that only eligible individuals are authorized to receive services, which may not be denied on the basis of residence of the individual.

Senate amendment

The Senate amendment generally follows the House bill, with several exceptions: the second category of eligibility does not include termination as a result of a substantial layoff; the long-term unemployment in the third category is specified as being at least fifteen weeks; the fourth category does not specify ranchers as a kind of self-employment and requires the Secretary to establish categories of self-employment and of economic conditions and natural disasters to which the fourth category applies; the amendment adds a fifth category of displaced homemakers; and, finally, there is no provision specifying that only eligible individuals may be served or that they must not be denied services on the basis of residence.

Conference agreement

The Senate recedes. The eligibility of displaced homemakers is dealt with in the requirements for the state plan, discussed later in this report.

5. DEFINITIONS (SEC. 303(b) IN HOUSE BILL; SEC. 301 IN SENATE BILL)

Present law

At present, Title III of JTPA contains no definitions. However, the definitions in section 4 of JTPA, notably including the definition of "State," are applicable to Title III.

House bill

The House bill includes definitions of "basic readjustment services," "dislocation event," "early readjustment assistance," "grant recipient," "local elected official," "recipient," "service provider," "substate area," "substate grantee," and "retraining services." The bill further specifies certain typical features of voluntary joint labor-management committees, including shared and equal participation by workers and management; shared financing between the company and the State; a neutral chairperson jointly selected by labor and management; ability to respond flexibly to worker needs; a formal agreement; and local job

identification activities on behalf of affected workers.

Senate amendment

The Senate Amendment follows the House bill in its definitions of "local elected official," "service provider," "substate area," and "substate grantee." It does not include definitions of "basic readjustment services," "retraining services," "dislocation event," "early readjustment assistance," and "grant recipient." The Senate amendment includes definitions of "private industry council," "rapid response," "rapid response capability," "rapid response team," "State," and "state unit." The Senate amendment specifies that labor-management committees are voluntary, consist of employee and employer representatives, assist in the adjustment of dislocated workers, and may have a neutral chairperson.

Conference agreement

The Conference agreement accepts the House bill definitions of "local elected official," "service provider," "substate area," and "substate grantee." The agreement eliminates all other definitions included in the House bill or Senate amendment, except for the definitions of "labor-management committee" and "State." The Conference agreement generally adopts the House bill's definition of "labor-management committee," except that the modifier "joint" has been omitted. The agreement accepts the Senate amendment definition of "State."

The only definition from current section 4 of JTPA that is changed specifically for Title III is the definition of "State," which is defined in the Conference agreement to include any of the several states, the District of Columbia, and the Commonwealth of Puerto Rico. Allotment of funds to the other territories and possessions of the United States included in the section 4 definition of "State" is dealt with separately for purposes of Title III.

6. WORKER READJUSTMENT AGREEMENT (SEC. 311 IN HOUSE BILL)

Present law

No provision.

House bill

The House bill requires each state Governor, as a requirement for receiving funds under this title, to develop a Worker Readjustment Agreement no later than four months before the beginning of the program year. The agreement must provide assurances that all programs will be operated in accordance with law.

Senate amendment

No provision

Conference agreement

The House recedes.

7. STATE COUNCIL (SEC. 312(a) IN HOUSE BILL; SEC. 2202(c) OF SENATE AMENDMENT)

Present law

Section 122 of the Job Training Partnership Act contains a requirement that each state desiring to receive financial assistance under the Act establish a state job training coordinating council, to be appointed by the Governor.

The state council shall be composed of one-third representatives of business and industry in the state; not less than 20 percent representatives of state legislatures and state agencies and organizations; not less than 20 percent representatives of general local government in the state; and not less than 20 percent representatives of the eligible population and the general public, organized labor, community-based organizations, and local education agencies.

House bill

The House bill requires each Governor to establish a State worker readjustment council, composed equally of representatives of labor, management, and public and private nonprofit organizations. Qualified members of existing State job training coordinating councils would receive first priority. Second priority would go to individuals recommended by business, labor, or other appropriate agencies, including representation from urban and rural areas within the State.

Senate amendment

The Senate amendment amends the existing State job training coordinating council under JTPA. The reconstituted council would continue to have duties pertinent to the entire Act. Members would be appointed by the Governor—after consulting labor, business, and other appropriate agencies, including lcoal governments. Membership would be composed of 30% business and industry representatives, 30% State and local government and local education agency representatives, 30% organized labor and community-based organization representatives, and 10% representation from the general public.

The Senate amendment further changes present law to require that the governor appoint the council after consulting with labor organizations, business, and other organizations affected by worker dislocation, including local governments, and that the governor designate one member to be chairperson.

Conference agreement

The Conference agreement follows the Senate amendment with respect to the composition of the council. The Conference agreement changes only the section 122(a)(3) requirements for composition of the council and does not change the provisions of present law concerning appointment to the council. Moreover, there is no requirement that every group enumerated in each membership category be represented on the council. The requirement is only that the membership be drawn from among these groups.

8. FUNCTIONS OF STATE COUNCIL (SEC. 312(b) IN HOUSE BILL; SEC. 316 IN SENATE AMENDMENT)

Present law

Present law does not include a lsit of functions for the council specific to Title III, but does include a list of overall duties under section 122(b) of the Act.

House bill

The House bill requires the state worker readjustment council to advise the Governor on designation of substate areas and substate grantees, develop a State plan for submission to the Governor, advise the Governor on distributing funds for readjustment training, advise the Governor on approval of substate plans, and advise the Governor on performance standards.

Senate amendment

The Senate amendment requires the State job training coordinating council to meet regularly (not less than quarterly), regularly review activities conducted under this title within the State, comment to the Governor and the Secretary on such reviews, review and comment on the State's biennial plan, review and comment on the substate plans, and perform such other advisory functions as the Governor may assign. The Senate amendment also requries the Governor to ensure adequate funds for the State council to perform its functions.

Conference agreement

The Conference agreement includes specific Title III functions for the council: providing advice to the governor regarding the use of funds under this title (including the designation of substate areas and grantees and the method for distribution of funds reserved or subject to reallocation), submission of written comments to the governor and Secretary on state and substate programs, submission of written comments on the state plan (and any modifications), submission of written comments on substate plans, and advising the governor on performance standards.

9. SUBMISSION OF STATE PLAN (SEC. 313(A) IN HOUSE BILL; SEC. 305(A) IN SENATE AMENDMENT)

Present law

Present law requires any state that desires to receive financial assistance under Title III to submit to the Secretary a plan for the use of such assistance.

House bill

The House bill requires state Governors to submit an annual plan to the Secretary in order to receive funds under this title. The bill further requires the state plan to include performance standards which must include incentives to provide longer-term training to workers who require it, consistent with section 106(g).

Senate amendment

The Senate amendment requires state Governors to submit a biennial plan to the Secretary in order to receive funds under this title. The plan must be submitted on or before the first day of May preceding the first program year for which funds are requested. The Senate amendment contains no provision on performance standards.

Conference agreement

The Conference agreement generally follows the Senate amendment. The agreement specifies that the state plan shall include incentives to provide training of greater duration for those who require it, consistent with section 106(g).

10. CONTENTS OF STATE PLAN (SEC. 313(b) IN HOUSE BILL; SEC. 305(a) IN SENATE AMENDMENT)

Present law

The only specifically required contents of the state plan under current law are provisions for coordinating with low income weatherization and other energy conservation programs, and social services.

House bill

The House bill requires the state plan to include assurances that services will be provided only to eligible workers and will not be denied solely on the basis of an individual's residence, that services will be available in all areas of the state, that substate areas and grantees will be designated in accordance with this title, that the state worker readjustment council will perform the functions required by this title, and that funds will be allocated and reallocated among substate areas as required in this title. The House bill further requires the state plan to describe the methods that will be used to provide: planning instructions and guidance, technical assistance; monitoring, assessment and evaluation of the program by the state; substate reporting requirements; advice to substate grantees; pro-

motion of labor-management cooperation; coordination with appropriate state programs, including economic development, education, training and social services; and coordination with vocational education and the Employment Service.

Senate amendment

The Senate amendment requires the state plan to demonstrate the following: services will be available to eligible workers through rapid response teams, substate grantees and other organizations; employees will be served equally regardless of state residency; the Governor has established and will support a state job training coordinating council in accordance with this title; the state council has reviewed and commented on the plan; the state will operate an adequate monitoring and reporting system; programs will be coordinated with other services for dislocated workers, including the Employment Service and unemployment insurance; services will be coordinated with Trade Adjustment Assistance; labor organizations will be consulted when substantial numbers of union members are to be served; individuals will not be disqualified from receiving unemployment insurance; performance standards will not be inconsistent with other sections of this title; the state dislocated workers unit and job training coordinating council will coordinate with the state agency responsible for veterans affairs.

Conference agreement

The Conference agreement requires that each state plan contain provisions demonstrating that the state will comply with the requirements of this title. It also requires provisions demonstrating the following: services will be provided only to eligible dislocated workers; services will not be denied to eligible workers displaced by a permanent closure or substantial layoff in a state, regardless of the state of residence of the workers; services may be provided to other eligible workers regardless of their state of residency; the state will designate or create an identifiable state dislocated worker unit to respond rapidly to permanent closures and substantial layoffs; the state unit will make appropriate retraining and basic adjustment services available, work with employers and labor organizations in promoting labor-management cooperation, operate a monitoring and reporting system to provide adequate information for effective program management, and provide technical assistance and advice to substate grantees; the state will provide additional dislocated workers (as defined elsewhere to include displaced homemakers) with the services available under this title to eligible dislocated workers only if the governor determines that the services may be provided to additional dislocated workers without adversely affecting the delivery of the services to eligible dislocated workers; the state unit will exchange information and coordinate programs with the appropriate economic development agency, state education and training and social services programs, and all other programs available to assist dislocated workers; the state unit will disseminate information on the availability of services throughout the state; labor organizations will be consulted when substantial numbers of their members are to be served; the state will not prescribe any standard for programs under this part that is inconsistent with section 106(g); the state job training coordinating council will review and comment on the plan; and the delivery of services with funds made available under this title will be integrated or coordinated with the Trade Adjustment Assistance programs in the state.

Services provided to additional dislocated workers should be part of ongoing programs and activities authorized under this title and not separate and discrete programs. Furthermore, governors may use their reserved funds to provide additional assistance to substate areas where unanticipated dislocation warrants such assistance.

11. PROCEDURES FOR REVIEW, APPROVAL, AND ENFORCEMENT OF STATE PLANS (SEC. 305(b) IN SENATE AMENDMENT)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment establishes procedures for timely review and approval of the state plan by the Secretary and requires notice and opportunity for a hearing before the Secretary may make a final disapproval of a plan. State plans may be modified at any time, if agreed to by the Governor and the Secretary. The Secretary must investigate any complaints or reports that a state is not complying with its plan. Failure to comply may result in financial penalites, after states have been given notice and opportunity for a hearing.

Conference agreement

The Conference agreement generally follows the Senate amendment. The provision on penalties for noncompliance is retained, but the Conference agreement specifies that the special penalty of withheld funds is to be imposed only where remedies generally available under JTPA are unavailable or inadequate to achieve state compliance with the terms of the state plan.

12. RAPID RESPONSE ASSISTANCE (SEC. 314(a)-(c) IN THE HOUSE BILL; SEC. 305(a) AND 306(b) IN SENATE AMENDMENT)

Present law

No provision

House bill

The House bill requires each state to designate an identifiable state dislocated worker unit or office, with the capability to respond rapidly (preferably within 48 hours), on site, to mass dislocation events throughout the state, in order to assess the need for, and initially provide, early readjustment assistance. Each state shall also ensure the capability to respond to dislocation events in sparsely populated areas where other forms of rapid response are inappropriate. The House bill further provides that the dislocated worker unit include specialists who will establish on-site contact with employer and employee representatives within a short period of time after becoming aware of a dislocation event, and who will promote the formation of labor-management committees, collect information related to economic dislocation, provide or obtain appropriate financial and technical advice and liaison with other organizaions, and disseminate information throughout the state on the availability of services. With respect to labor-management committees, the unit shall have authority to assist immediately in the formation of these committees, including providing immediate financial assistance; providing a list of individuals from which the chairperson may be selected; and serving as resource persons for technical advice, information, and liaison with other services and programs.

The House bill specifies that Governors may delegate rapid response functions to a local entity which has demonstrated its capacity to provide these services prior to enhancement of this program. The House bill further requires each state to ensure the capability to respond to dislocation events where other forms of rapid response are inappropriate, especially in sparsely populated areas. This capability may include widespread outreach mechanisms, financial evaluation and counseling, initial assessment and referral for further services through substate grantees, and assistance to substate grantees in establishing regional centers for outreach, assessment and early readjustment assistance.

Senate amendment

The Senate amendment requires that funds allocated to a state under this title shall be used to establish and maintain a rapid response capability, enabling the state unit to respond immediately to plant closings and mass layoffs by prompt on-site delivery of appropriate information and necessary dislocated worker services. The capability may include emergency assistance centers geared to particular plant closings; development of direct service delivery teams; development of a system for early identification of prospective plant closings and mass layoffs; and ongoing and continued support for labor-management committees. Rapid response personnel may gather information related to economic dislocation and engage in the formation and support of those committees. Such personnel are also authorized to provide to the committee a list of individuals from which an impartial chair may be selected, serve as ex officio members, serve as resource persons to provide technical advice and information, facilitate the selection of worker representatives, collect information on potential closings and layoffs, and assist the local community in developing its own coordinated response and in obtaining access to state economic development assistance. A state may provide funds for exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

Conference agreement

The establishment and maintenance of rapid response capabilities are among the most important tasks that states can perform to facilitate the prompt and satisfactory reemployment of dislocated workers. With respect to a state dislocated worker unit, the conference agreement requires each state to designate or create an indentifiable state dislocated worker unit or office, with the capability to respond rapidly (preferably within 48 hours), on site, to permanent closures and substantial layoffs throughout the state in order to assess the need for, and initially to provide for, basic readjustment services. The Conference agreement contains no requirement in this provision that states ensure the capability to respond to dislocation events where normal rapid response is inappropriate. However, as described elsewhere in this report, each substate area is required to plan for expeditious response to dislocation events where a state rapid response would be inappropriate, such as where only a small number of workers is affected.

The Conference agreement also generally follows the House bill in the list of responsibilities for specialists in the dislocated worker unit, again with a number of modifications: the on-site contact is called for

after the unit becomes aware of "a current or projected permanent closure or substantial layoff"; the responsibility of the specialists is to "collect," rather than "obtain," information related to economic dislocation; and the responsibility to assist the local community in developing its own coordinated response, as specified in the Senate amendment, has been included. The Conferees encourage the prompt notification of substate grantees by the rapid response specialists when rapid response activities are conducted within the substate area.

The Conference agreement does not permit a governor to delegate the rapid response responsibility to a local entity.

The Conference agreement contains a modified version of the Senate amendment's authority for the state to provide exploratory funds for a possible purchase of a plant. The Conference agreement specifies that a state may provide funds allocated under this title, where other resources are not expeditiously available, for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation. The Conferees intend the the use of funds for this purpose be limited and not be the usual practice in closure situations. Other funding will often be available from private or other public sources, and it is not the purpose of this provision to supplant those other resources. The Conferees intend this provision to allow funding of what are commonly known as "prefeasibility studies" and do not intend funds to be spent under this provision for full-scale feasibility studies.

13. RELATIONSHIP TO UNEMPLOYMENT COMPENSATION SYSTEM (SEC. 314(d) IN HOUSE BILL; SEC. 306(f) IN SENATE AMENDMENT)

Present law

No directly comparable provision. However, section 302(d) of the existing Title III provides that acceptance of training opportunities under such title shall be deemed approved training for purposes of qualifying for Federal unemployment benefits.

House bill

The House bill makes each state responsible for coordinating the unemployment compensation system and worker readjustment programs within that state, including criteria for early identification of those having the most difficulty in finding employment; mechanisms for early referral of individuals to readjustment services; procedures for informing unemployment compensation recipients, at the time eligibility is determined, that receipt of future benefits will be based on early enrollment in retraining services; and measures to ensure compliance with the approved training rule.

Senate amendment

The Senate amendment requires states to establish programs to link the unemployment compensation system and the worker readjustment program. Such programs must include criteria for early identification of those having the most difficulty in finding employment; mechanisms for early referral of individuals to readjustment services; methods to prepare the unemployment system for its new responsibilities; and measures taken to ensure compliance with the approved training rule. Such programs may also include financial incentives for employers through amendments to state unemployment compensation laws.

Conference agreement

The Conference agreement provides that funds allocated under this title may be used for coordination of worker readjustment programs and the unemployment compensation system, consistent with the statutory limit on administrative expenses. Each state shall be responsible for coordinating the two systems within that state.

14. DESIGNATION OF SUBSTATE AREAS (SEC. 315 IN HOUSE BILL; SEC. 307(a)-(b) IN SENATE AMENDMENT)

Present law

No provision.

House bill

The House bill requires the governor of each state participating in the program to designate substate areas for the state, after receiving recommendations from the state council. The bill further provides that the governor must designate as a substate area any service delivery area (SDA) with a population of 200,000 or more and any concentrated employment grantee for a rural area; the governor must also designate any two or more contiguous service delivery areas that in the aggregate have a population of 200,000 or more and that request such designation, unless the governor determines that such a designation would not be consistent with the effective delivery of services or would be otherwise inappropriate. The designations made under this section may not be revised more than once every two years. Each service delivery area within a state shall be included within a substate area and no service delivery area shall be divided among two or more substate areas.

Senate amendment

The Senate amendment provides that the governor of each state shall, after receiving recommendations from the state council, designate substate areas, consisting of one or more service delivery area. The governor must designate as a substate area each service delivery area with a population of 500,000. In smaller areas the governor may designate any service delivery area or combination of two or more contiguous service delivery areas.

Conference agreement

The Senate recedes. The Conferees wish to clarify that the automatic designation of service delivery areas of 200,00 or more does not preclude the governor from designating service delivery areas with smaller populations. Nor does this designation preclude two or more service delivery areas from joining together voluntarily and requesting designation. The governor may deny such a request, but only upon a determination that the request is not consistent with the effective delivery of services to eligible dislocated workers in the relevent labor market, or would otherwise be inappropriate. The Conferees assume that governors will give good faith consideration to all such requests.

15. DESIGNATION OF SUBSTATE GRANTEES (SEC. 316 IN HOUSE BILL; SEC. 308 IN SENATE AMENDMENT)

Present law

No provision.

House bill

The House bill requires that a substate grantee be designated for each substate area in accordance with an agreement among the governor, local elected official or officials of such area, and the private industry council or councils of such area. The governor shall, after consultation with the state council, establish procedures for designation of representatives of officials and councils where an area includes more than one such official or council. If agreement cannot be reached on the selection of substate grantee, the governor shall make the selection. Entities eligible for designation as substate grantees include private industry councils, SDA grant recipients or entities, private nonprofit organizations, units or agencies of general local government, local offices of state agencies, and other public agencies such as community colleges. The bill further provides that the requirements of parts C and D of Title I of JTPA applicable to an entity or assistance recipient shall apply to substate grantees.

Senate amendment

The Senate amendment is similar to the House bill, except for the following details; the designation of substate areas shall be on a biennial basis; the governor is not required to consult with the state council; the governor is authorized to establish procedures for designation, including a requirement that entities interested in designation submit a proposal for a substate plan; the list of eligible entities includes area vocational schools as an example of a public agency.

Conference agreement

The Conference agreement generally follows the House bill, except that the example of area vocational schools is included.

The conferees wish to clarify that, although the governor is given the authority to select a substate grantee in the absence of agreement with the local elected official and the private industry council, the governor is expected to conduct a good faith negotiation with those parties and to make a good faith effort to reach agreement.

Moreover, the conferees agreed to omit the final sentence of the Senate provision on designating substate grantees only because it was thought unnecessary to include this specific statement in light of the overall administrative authority granted the governor, and because there was no intention to suggest that the governor's authority might be limited to the actions enumerated in the Senate amendment. The conferees intend that the governor have authority to establish procedures for designating substate grantees, including a requirement that entities eligible for and interested in designation submit a draft proposal for the substate plan described in section 313, or some other statement of how the prospective grantee would administer the dislocated worker programs in its area.

16. SUBSTATE PLAN (SEC. 317 IN HOUSE BILL; SEC. 309-311 IN SENATE AMENDMENT)

Present law

No provision.

House bill

The House bill provides that no funds may be provided to a substate grantee unless the governor, after considering the recommendations of the state council, has approved a substate plan submitted by the grantee, which describes the manner in which activities will be conducted to implement the requirements of this title. Prior to submission to the governor, the plan shall be submitted for review and comment to the other parties to the agreement for selection of a substate grantee.

The bill further provides that the substate plan contain a statement of the following: the means for delivering services to eligible participants; the means to identify and select program participants; the means to

coordinate the worker adjustment system with the unemployment compensation system; the means for involving labor organizations; the performance goals to be achieved consistent with goals in the state plan; the criteria for determining and verifying program eligibility; procedures for selecting service providers; a description of any rapid response capability; a description of the methods by which other parties to the agreement selecting the substate grantee shall be involved in a variety of activities; a description of training services to be provided; the means whereby coordination with other programs will be effected; and a detailed budget, as required by the state.

Senate amendment

The Senate amendment follows the House bill in requiring submission by the substate grantee, and approval by the governor, of a substate plan, before any funds may be provided to a substate grantee. The Senate amendment requires many of the same items to be considered in the state plan as does the House bill. The Senate amendment does not, however, require a description of any rapid response capability of the substate grantee or of a description of the methods by which other parties will be involved in the activities of the substate grantee. The Senate amendment contains a separate provision on selection of providers and a separate readjustment training plan. The Senate amendment requires that the substate plan state the means for ensuring that adequate funds are available and used to provide retraining services for eligible participants. The Senate amendment requires that the statement of placement goals to be achieved includes estimates of placements. Finally, the Senate amendment requires that the plan state the means whereby coordination of services with other substate grantees will be effected.

The Senate amendment contains a provision with criteria for the selection of service providers by the substate grantee. The primary considerations shall be the effectiveness of the organization in delivering comparable services based on demonstrated performance, in terms of the likelihood of meeting performance goals, cost, quality of education or training, and characteristics of participants.

The Senate amendment requires a substate training plan to be developed by the substate grantee as part of its substate plan. That retraining plan must include procedures to assess the skills of dislocated workers; procedures to assess their needs; procedures to provide services recommended by rapid response teams; a description of services and activities to be provided in the substate area; and a list of goals for the substate area.

The Senate amendment permits the governor to direct the expenditure of funds allocated to the substate area if the substate grantee fails, within a reasonable time, to submit a plan that is approved. Further, if the substate grantee fails to spend its funds in accordance with its plan, the governor may, after appropriate notice and opportunity for comment, direct expenditure of the funds in accordance with the substate plan.

Conference agreement

The Conference agreement generally adopts the House bill in its requirements for a substate plan, with the following exceptions: First, the requirement for approval was modified to require approval for a modification of a plan, as well as an initial plan. Second, the reference to rapid response capability of a substate grantee was deleted because the Conferees expect the state rapid response unit to deal with all plant closings and layoffs involving a significant number of workers. However, the Conference agreement includes a requirement that the plan include a description of the methods by which the substate grantee will respond expeditiously to worker dislocation where the rapid response assistance to be provided by the state is inappropriate. This responsibility may be fulfilled, among other ways, through development of outreach mechanisms, provision of evaluation and counseling to assist in determining eligibility for service and the type of services needed, initial assessment and referral for other services, and establishment of regional centers to provide these services. Third, the requirement for a listing of criteria to be applied in determining and verifying program eligibility has been omitted as redundant of the requirement for verifying the eligibility of program participants. Fourth, while the Senate requirement for a separate readjustment training plan has been omitted, the conference agreement includes two requirements in addition to those in the House bill for the substate plan's description of training services—methods for allocating resources to provide services recommended by rapid response teams and a decription of services to be provided in the substate area.

The involvement of the local elected officials and private industry councils can take a variety of forms, such as policy guidance, oversight, program review and comment, promoting labor-management cooperation, and providing support for rapid response activities. The Conferees did not want either to require or preclude any particular form of involvement.

The Conference agreement generally follows the Senate amendment's provisions granting the governor's authority to direct expenditures of funds in the substate area under certain circumstances. The Conference agreement modified those provisions in three respects—first, it added selection of a new substate grantee as an additional circumstances in which the gubernatorial power to direct expenditures of substate funds ends; second, it modified the bypass authority when a substate grantee fails to follow its plan by specifying that bypass authority continues only until the substate grantee properly allocates the funds or submits an acceptable modification of the plan, or a new substate grantee is designated; third, the agreement modified the bypass authority to require that the state follow the procedures in JTPA section 105(b)(1)–(3) whenever it seeks to use this authority.

17. APPROVED TRAINING RULE (SEC. 318 IN HOUSE BILL; SEC. 312 IN SENATE AMENDMENT)

Present law

No provision.

House bill

The House bill provides that participation by an individual in any of the programs authorized in this title shall be deemed to be acceptance of training with the approval of the state within the meaning of any other provision of federal law relating to unemployment benefits.

Senate amendment

The Senate amendment follows the House bill.

Conference agreement

The Senate recedes.

18. USE OF FUNDS ALLOTED TO A STATE (SEC. 331, 333, 334, 341–344(A)(b), 345 IN HOUSE BILL; SEC. 306(a), (c), (d) IN SENATE AMENDMENT)

Present law

Services that may be provided with Title III assistance include, but are not limited to: job search, job development, training, supportive services, pre-layoff assistance, relocation assistance, and cooperative programs with employers or labor organizations.

House bill

The House bill authorizes governors and substate grantees to spend funds made available specifically for basic readjustment services. Basic readjustment services may include (but are not limited to) early readjustment assistance, outreach and intake, counseling (including financial counseling), testing, orientation, assessment, determination of occupational skills, development of individual readjustment plans, provision of future occupational information, job placement assistance, labor market information, job clubs, local job search, job development, self-directed job search, and retraining services.

The House bill authorizes substate grantees to provide appropriate supportive services to participants where necessary to facilitate participation in basic readjustment programs. Such services may continue for no longer than 180 days after participation in the program. Participants in retraining services, when authorized as basic readjustment services, may receive supportive services and benefit payments.

The House bill further authorizes governors and substate grantees to spend funds made available by the Secretary specifically for worker readjustment training. The Secretary must allot funds for training after establishing an annual availability target for each state, usually equal to one and two thirds of the states's allotment for basic readjustment services in a given fiscal year. The Secretary also must establish semi-annual targets, equal to half of the annual target. If states do not spend their full semi-annual target in a given six-month period, the annual target will be reduced by the amount not spent, although the subsequent semi-annual target will not be affected. Governors may, after considering recommendations of the state counsel, establish appropriate procedures for making funds available for use in substate areas.

Training services may include, but are not limited to, classroom, training, occupational skill training, one-the-job training, out-of-area job search, relocation, basic and remedial education, literacy training, entrepreneurial training, and other appropriate training activities directly related to appropriate employment opportunities in the substate area. The House bill further prohibits the use of funds for public service employment or work experience and limits support for training programs for individuals to 104 weeks.

Senate amendment

The Senate amendment authorizes a single allotment of funds to states to be used for all of the following services: rapid response assistance, basic readjustment services, retraining services, income support, and linkages with the unemployment compensation system.

The Senate amendment is similar to the House bill in its enumeration of permissible basic readjustment activities. The Senate bill does not include outreach and intake.

Further, the Senate amendment includes several items not included in the House list: prelayoff assistance, relocation, and programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities. The Senate amendment includes supportive services, including child care and other services, which shall in general terminate not later than the 45th day after the participant has completed other services under this part; counseling necessary to assist participants to retain employment may continue for up to six months following the completion of training.

The Senate amendment, like the House bill, enumerates permissible retraining services. The Senate amendment specifies that special emphasis for retraining services should be focused on experienced workers.

Conference agreement

The House recedes to the concept of providing a single allotment of funds to each state for all services.

The Conference agreement generally includes the Senate's enumeration of permissible basic readjustment services, with the following exceptions: "outreach and intake" is included; the two items pertaining to job search ("local job search" and "self-directed job search") are combined into a single item ("job search"); and the permissible duration of most supportive services is extended to 90 days after the participant has completed other services provided under Title III programs. Also, the agreement deletes the specific reference to financial counseling from the list of allowable basic readjustment services and includes it as an item within supportive services.

The Conference agreement adopts the House bill in its enumeration of permissible retraining services. The agreement also retains the House bill provision prohibiting the use of funds under this Part for public service employment, but does not prohibit the use of funds for work experience. The Conference agreement does not include any limit upon the time during which training programs for individuals may be supported.

19. NEEDS-RELATED PAYMENTS (SEC. 344(C) IN HOUSE BILL; SEC. 306(e) IN SENATE AMENDMENT)

Present law

No provision.

House bill

The House bill provides that participants in retraining services who have exhausted their unemployment insurance benefits may receive a weekly payment while they are in retraining, not to exceed the amount of their average unemployment compensation benefit. Workers permanently laid off must enroll in training by the end of the 10th week of their unemployment compensation eligibility period to receive these payments; other workers will receive priority for payments if they enroll in training by the end of their 15th week of unemployment compensation eligibility. Substate grantees also may provide needs-based payments to workers, especially those not eligible for unemployment compensation, who are not receiving these payments.

Senate amendment

The Senate amendment authorizes benefit payments to retraining participants who are not eligible for unemployment compensation or who have exhausted their unemployment compensation benefits. Those in the latter category must have enrolled in retraining by the end of the thirteenth week of their initial period of eligibility for unemployment compensation. Payments may not exceed the higher of the applicable unemployment compensation level or the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

Conference agreement

The Conference agreement generally adopts the Senate amendment, except in the following respects: the agreement refers to "needs-related payments" rather than "income support"; the provision specifies that payments are "in order to enable" workers to participate in training or education programs"; and the requirement for unemployment compensation recipients to begin training by the end of the 13th week of initial eligibility is modified in the case of workers who have been on a layoff of specified short-term duration who are informed that their layoff will exceed six months, so that they may qualify for needs-related payments if they enroll in training by the end of their 13th week of initial eligibility or the end of the 8th week after they are informed their layoffs will exceed six months, whichever is later.

20. LIMITATIONS ON USE OF FUNDS (SEC. 335, 341, 343 IN HOUSE BILL; SEC. 306(e)(3), 306(g), 314(d) IN SENATE AMENDMENT)

Present law

In general, not more than 30 percent of the Federal funds alloted to a state under Title III may be used for supportive services, wages, allowances, stipends, and costs of administration.

House bill

As discussed above, the House bill creates a separate allocation scheme for retraining funds, and the funds allocated under that scheme could be used only for retraining and related services. In addition, the House bill prohibits substate grantees from spending more than 15 percent of the amounts expended under this part on administrative expenses. The House bill prohibits expenditure of more than 15 percent of the funds expended by a substate grantee on basic readjustment services, and 30 percent of the funds expended on training services, from being expended on supportive services and benefits. Finally, the House bill requires that minimum and maximum cost limitations be applicable to accrued expenditures each program year.

Senate amendment

The Senate amendment requires that at least 30 percent of the funds expended shall be expended for retraining services, except that the governor can waive this requirement if the substate grantee so request and demonstrates the need for and amount of the reduction of expenditures for retraining. The Senate amendment also prohibits any substate grantee or the governor from expending more than 15 percent of the funds expended on administrative costs. The Senate amendment further prohibits either the governor or substate grantees from expending more than 15 percent of the funds expended on income support and other supportive services.

Conference agreement

The Conference agreement requires that at least 50 percent of the funds expended under this title by any substate grantee be expended for retraining services. A substate grantee may apply to the governor for a waiver of this requirement, which may be granted in whole or in part if the substate grantee demonstrates that the worker readjustment program in the area will be consistent with the principle that dislocated workers be prepared for occupations with long-term potential. The governor is required to prescribe criteria for demonstrating this principle. An application for a waiver is to be submitted in the time and form prescribed by the governor, who shall provide an opportunity for public comment on the application. In no event may the substate grantee expend less than 30 percent of the total funds it expends for retraining.

The Conference agreement prohibits the use of more than 25 percent of the funds expended under this title by or any substate grantee for needs-related payments and other supportive services. The Conference agreement places a 15 percent limitation on administrative costs. The Conferees intend that these cost limitations should be applicable to accrued expenditures for each program year.

The Conferees recognize that a new state-level activity of rapid response is required for states to receive funds under this title. Expenditures for rapid response assistance under section 314(b) should not be included as administrative costs. However, the limitation should apply against any amounts expended for administrative activities associated with the state dislocated worker unit.

Finally, the limitation on administrative costs should be calculated only be reference to funds reserved for the governor's use; it would not include any additional funds that are reserved under section 302(c)(2). All such funds must be distributed to substate grantees. The administrative cost limitation on such funds applies at the substate level.

21. METHODS OF PROVIDING RETRAINING SERVICES (SEC. 345(d)-(g) IN HOUSE BILL; SEC. 310(c), (d) IN SENATE AMENDMENT)

Present law

No provision.

House bill

The House bill provides that eligible retraining participants shall receive either retraining services or a certificate of continuing eligibility. To the maximum extent feasible, training services shall be provided through systems of individual certificates that permit participants to seek out and arrange their own training. Training opportunities identified with approved service providers shall, pursuant to the certificate, be arranged through a grant, contract, or otherwise between the substate grantee and the service provider identified in the certificate.

A certificate of continuing eligibility may be issued for periods of up to one hundred and four weeks. No certificate may refer to specific amounts of funds, and each certificate shall state that it is subject to the availability of funds at the time services are provided. Acceptance of the certificate shall not be deemed to be enrollment in training. Any individual receiving such a certificate will remain eligible for the program under this part for the period specified in the certificate and may use it for retraining services.

Senate amendment

The Senate amendment is generally consistent with the House bill, except for minor differences of phrasing and the omission of a specification that acceptance of a certificate of continuing eligibility shall not be deemed to be enrollment in training.

Conference agreement

The Conference agreement generally adopts the shared features of the House bill

and Senate amendment, with the following exceptions: The agreement specifies the alternative methods by which substate grantees may provide retraining services—by beginning such services promptly, by deferring the beginning of such services and providing the worker with a certificate of continuing eligibility, or by permitting the worker to obtain such services from a service provider by using a certificate in accordance with this section. The Conference agreement contains no requirement that individual certificates be used to the maximum extent feasible. The provision that acceptance of such a certificate is not deemed to be enrollment in training is retained. Finally, there are certain minor changes of working in the Conference agreement.

22. RECAPTURE AND REALLOTMENT OF UNEXPENDED FUNDS (SEC. 336 IN HOUSE BILL; SEC. 315 IN SENATE AMENDMENT)

Present law

The Secretary is authorized to reallot any allotment to a state to the extent that the state will not be able to obligate such amounts within one year of allotment.

House bill

The House bill specifies that any portion of a state's annual allotment for basic readjustment services, against which costs have not been incurred by the end of the program year, in excess of 20 percent of the allotment, may be realloted by the Secretary. The Secretary may reduce current year allotments by the amount subject to reallotment in the prior year. Governors may reallocate funds available for basic readjustment services within their states if the substate grantees agree with the reallocation or if the governor determines that planned minimum expenditure levels will not be met.

Senate amendment

The Senate amendment provides that unexpected funds at the end of the program year in excess of 20 percent of a state's annual allotment, plus any unexpended funds from previous years, may be reallocated to eligible states, defined as those among the top half of all state unemployment rates which have spent at least 90 percent of their allotments. No single state may receive more than one twenty-fifth of the funds available for reallocation in a single year.

The Senate amendment further provides that any state that spends at least 95 percent of its annual allotment, and appropriates its own funds to respond to an unforeseen increase in dislocated workers, may be reimbursed from its next year's federal allocation.

Conference agreement

The Conference agreement is that there shall be recaptured and realloted the amount by which the unexpended state allotment at the end of a program year exceeds 20 percent of that allotment and, in addition, the unexpended balance of the state allotment from any previous program year. Funds recaptured by the Secretary in this way shall be reallotted in two steps, in accordance with the formula in section 302(b). The states eligible to receive realloted funds are those that have expended at least 80 percent of their allotments from the previous program year. First, the Secretary shall allot to eligible states with average unemployment rates above the national average (calculated over the most recent 12 month period) the amount determined through use of the formula. That is, the Secretary shall calculate the amounts that would be available to each state if the formula was used to allocate the recaptured funds, but only high unemployment states actually shall receive the amounts so calculated. Second, the Secretary shall allot the remaining amount to all eligible states, again using the formula in section 302(b), though this time allocating all of the remaining funds to eligible states. Finally, discretionary funds awarded by the Secretary under sections 322(a)(2) and 322(a)(3) shall not be included in calculating reallotments under this section.

The governor of each state shall prescribe uniform procedures for the expenditure of funds by substate grantees in order to avoid the reallotment mechanism. Further, the governor shall prescribe equitable procedures for making funds available from both the state and substate grantees should such reallotment become necessary.

23. FEDERAL RESPONSIBILITIES AND ADMINISTRATION (SECS. 351, 352 IN HOUSE BILL; SECS. 304, 314, 317, 351, 352 IN SENATE AMENDMENT)

Present law

Under present law, the sums reserved for the Secretary shall be used for training, retraining, job search, placement, relocation assistance, and other aid to individuals affected by mass layoffs, natural disasters, Federal government actions, or who reside in areas of high unemployment or designated enterprise zones.

House bill

The House bill authorizes the Secretary to provide services in cases of mass layoffs, including mass layoffs caused by natural disasters or Federal action; industrywide projects (treating agriculture as an industry); multistate projects; special projections with Indian tribes; special projects to address national or regional concerns; and demonstration projects.

The House bill further allows use of the funds reserved to the Secretary when an emergency exists with respect to any particular distressed industry or any particular distressed area. The bill further specifies that no more than 5 percent of funds reserved for Federal readjustment activities may be used by the Secretary for staff training and technical assistance for public and private entities, except that this limitation does not apply to training for staff who provide rapid response services.

The bill further authorizes the Secretary to undertake projects of national or regional concern.

Senate amendment

The Senate amendment contains separate sections on Federal delivery of dislocated worker services. It provides general authority to the Secretary of Labor to administer the program, provide funds to exemplary and demonstration programs, allocate discretionary funds to projects serving workers affected by multistate or industry wide dislocations and to areas of special need, monitor performance and certify compliance with promulgated standards, and provide technical assistance to appropriate public and private entities.

The amendment also requires the Secretary to create or designate an identifiable dislocated workers unit or office. The Secretary is authorized to employ personnel to carry out the functions of this Title, secure necessary information from other federal agencies, and obtain the services of experts. The unit or office created or designated by the Secretary must consult with the Assistant Secretary for Veterans' Employment and Training.

The amendment further requires the Secretary to issue standards for the conduct and evaluation of dislocated worker programs, and prohibits such standards from counting the cost of income support provided as cost of enrollment or placement.

The Senate amendment authorizes the Secretary to use the amount that would have been allocated to a state to provide dislocated worker services in a state that fails to qualify for an allocation.

The amendment requires the Secretary to ensure that each state unit has access to information collected and maintained under part E of Title IV of this Act.

The Senate amendment requires the Secretary to evaluate the dislocated workers program and its success in placing eligible workers in unsubsidized employment and to report annually on the activities of the dislocated workers unit.

The Senate amendment further specifies that funds reserved to the Secretary may be used to provide readjustment services for workers dislocated due to mass layoffs caused by natural disasters (where workers are not expected to return to their previous occupations), other mass layoffs, and for industry-wide and state-wide projects.

The amendment is similar to the House bill in authorizing the Secretary to provide emergency assistance for particularly distressed industries and regions. The Senate amendment authorizes use of funds for staff training and technical assistance to public and private entities.

Conference agreement

The Conference agreement provides that the Secretary may use funds to provide services in the case of mass layoffs (including those caused by natural disasters or Federal action) where employees are not expected to return to their previous jobs, industrywide projects, multistate projects, special projects carried out with Indian tribes, special projects to address national or regional concerns, demonstration projects, provision of additional financial assistance to state and substate dislocated workers programs, and provision of additional assistance under proposals for financial assistance that are submitted to the Secretary and approved after consultation with the governor of the state in which the project is to operate. Amounts reserved to the Secretary may also be used for emergency assistance for particularly distressed industries or areas.

In the requirement for an identifiable dislocated workers unit, the order of the verbs has been reversed to read "designate or create." The Conferees have omitted as unnecessary number of provisions included in the Senate bill: the authorizations to employ personnel, secure information from other Federal agencies, and obtain the services of experts do not require special authorization in this legislation, and the Conferees did not want to imply by including these specific provisions that the Secretary would be disabled from carrying out other administrative functions under Title III.

The Secretary may use up to 5 percent of the funds reserved to the Secretary in any fiscal year to provide technical assistance and staff training to states, communities, businesses and labor organizations. Amounts reserved to the Secretary may also be used to provide training of staff who provide rapid response services in the states.

The Secretary's authority to deliver services to states where those states have not qualified under this Title has been changed to make clear that the failure to qualify is a failure to submit a satisfactory state plan under section 311. Moreover, the Secretary's authority to bypass remains only until such time as the state has qualified under section 311, and has come into compliance with the law.

The Conference agreement does not include the Senate amendment's requirement for continuing evaluation of Title III activities and an annual report to Congress.

24. DEMONSTRATION PROGRAMS (SEC. 352(f)-(h) IN HOUSE BILL; SEC. 356-385 IN SENATE AMENDMENT)

Present law

No provision.

House bill

The House bill authorizes the Secretary to carry out a training loan demonstration program, a public works employment demonstration, and a demonstration for dislocated farmers, farm employees and ranchers. The bill specifies conditions and requirements for any such programs that the Secretary chooses to conduct.

The House bill further authorizes the Secretary to provide services under proposals for financial assistance that are submitted to the Secretary, who is to consult in a timely fashion with the governor of the state in which the project is to be located. Proposals for assistance shall, with certain exceptions, contain evidence of review by the local private indusry council. Any proposal intended to provide services to a substantial number of members of a labor organization shall be submitted after consultation with such labor organization.

Senate amendment

The Senate amendment directs the Secretary to carry out dislocated worker loan demonstration programs; demonstration projects to determine the feasibility and cost effectiveness of offering recipients of unemployment compensation assistance to establish their own businesses; public works employment demonstration projects; demonstration projects for disclocated farmers, farm employees, and ranchers; and grants to nonprofit community development corporations to demonstrate the effectiveness of these organizations in creating employment opportunities for eligible dislocated workers. The amendment specifies conditions and requirements for these programs and projects.

The Senate amendment authorizes the Secretary to provide services under proposals for financial assistance. Proposals for financial assistance are to be submitted to the Secretary, through the governor of the state in which the proposal is to operate.

The Senate amendment specifies the following allocation of funds reserved for federally administered discretionary programs: no more than 30 percent for training loan demonstrations, self-employment opportunity demonstrations, pubic works employment demonstrations, dislocated farmer demonstrations, and job creation demonstrations; and at least 70 percent for the Secretary's discretionary programs. No less than 10 percent, but no more than $20 million, must be used for dislocated farmer demonstrations.

Finally, the Senate amendment requires the Secretary to disseminate information on the effectiveness of programs assisted with demonstration and discretionary funds of the Secretary.

Conference agreement

The Conference agreement requires the Secretary to expend not less than 10 percent of the funds reserved to the Secretary under this Title in fiscal years 1989, 1990, and 1991 to be expended on demonstration programs of up to three years in length, including but not limited to at least two of the following programs: self-employment opportunity demonstration program; public works employment demonstration program; dislocated farmer demonstration program; and job creation demonstration program. The Secretary is to conduct or provide for evaluation of each demonstration program, and report to Congress on those evaluations and any recommendations for legislative action.

The purpose of the demonstration grants is to experiment on a modest scale with novel approaches that subsequently may prove beneficial to larger dislocated worker populations. In this regard, the four listed demonstration programs are efforts to develop new directions for the future. The self-employment opportunity program would offer technical and financial assistance to dislocated workers who are attempting to establish their own business enterprises. The public works employment program would provide jobs as a last resort (for dislocated workers who qualify) to help develop marketable skills for future employment in the private sector. The dislocated farmer program would offer specially tailored outreach, readjustment and retraining assistance to dislocated farmers, farm employees, and ranchers who are otherwise receiving assistance under Title III. Under the job creation program, the Secretary, in consultation with the Secretary of Health and Human Services, would make grants to nonprofit community development corporations, which would make financial and technical assistance available for the creation of employment and entrepreneurial opportunities. Particular targets of these job-creating efforts would be communities adversely affected by worker dislocation, especially low-income families within those areas. In carrying out these demonstration programs, the Secretary shall consult with other appropriate Federal agencies.

The Conferees direct the Secretary to initiate at least two of the four listed programs as multi-year projects. However, the Conferees also intend that the Secretary may exercise discretion to expend some part of the reserved funds on demonstration programs other than the four described above. Finally, the Conferees intend that whatever demonstration programs are operated will be thoroughly researched and evaluated, and that the Secretary will report to Congress with specific recommendations, including recommendations for legislation where appropriate. The Conferees do not expect funding of these projects as demonstration projects to continue beyond fiscal year 1991.

25. EFFECTIVE DATE AND TRANSITION PROVISIONS (SEC. 594 OF HOUSE BILL; SEC. 2202(C), (E) OF SENATE AMENDMENT)

House bill

The House bill provides that the amendments to Title III of JTPA be effective with respect to appropriations for fiscal year 1988 and succeeding fiscal years. The rest of the House provisions shall be effective upon date of enactment.

Senate amendment

The Senate amendment authorizes the Secretary to implement whatever procedures necessary to terminate activities under Title III and to provide for orderly transition to activities authorized by Title III as amended in this legislation. The changes in the composition of the state job training coordinating council shall take effect 60 days after the date of enactment of the legislation.

Conference agreement

In general the amendments made by sections 6202 and 6204 are effective for program years beginning on or after July 1, 1989. During the program year beginning July 1, 1988, the Secretary and governors shall continue to administer Title III as under present law, except to the extent necessary to provide for an orderly transition and implementation of the amendments made in this legislation. The Secretary and governors are authorized to use funds from fiscal year 1989, or any preceding fiscal year, for these transition and implementation purposes.

The changes in the state job training coordinating council membership shall be made not later than January 1, 1989; after these changes are made, the council shall begin to perform the functions specified for Title III in section 317 of this legislation.

The designation of substate areas and grantees required in this legislation shall be completed by March 1, 1989.

The provisions of this legislation on carryover and reallotment of funds shall apply to the program year beginning July 1, 1988, except that the amount to be realloted shall be that portion of a state's funds after 70% of allotment that has not been expended, and the eligible states shall include those that have spent 70% of their prior year allotments.

The Secretary shall, not later than November 1, 1988, prescribe such regulations as may be required to implement the amendments made in this legislation.

B.—Amendments to Other Provisions of Job Training Partnership Act

1. PERFORMANCE STANDARDS (SEC. 2202(d) OF SENATE AMENDMENT)

Present law

Section 106(a) of the Job Training Partnership Act requires the Secretary to prescribe performance standards for programs under Title III based on placement and retention in unsubsidized employment.

House bill

No provision.

Senate amendment

The Senate amendment amends section 106 of the Job Training Partnership Act to allow governors to vary performance standards, including those for dislocated workers, to reflect various factors in substate areas. In addition, the Senate amendment includes a provision specifying that no standard prescribed within Title III or under section 106(g) shall count the cost of income support provided under Title III as a part of the cost of enrollment and placement of participants or shall otherwise penalize the provision of such income support.

Conference agreement

The Conference agreement accepts the Senate amendment with respect to allowing governors to vary performance standards based on differing factors in substate areas. The Conference agreement with respect to the treatment of needs-related payments in performance standards adds a new paragraph to section 106(g), stating that any performance standard shall make appropriate allowance for the difference in cost re-

sulting from serving workers receiving needs-related payments under Title III.

2. AUTHORIZATION OF APPROPRIATIONS (SEC. 302(a) IN HOUSE BILL; SEC. 2202(b) OF SENATE AMENDMENT)

Present law

Present law authorizes appropriations of such sums as are necessary to carry out Title III.

House bill

The House bill authorizes appropriations to carry out Title III of $980 million for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year.

Senate amendment

The Senate amendment amends section 3(c) of JTPA to authorize for carrying out Title III $980 million for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year.

Conference agreement

The Conference agreement authorizes $980 million for fiscal year 1989, and such sums as may be necessary for each succeeding fiscal year.

3. JOB BANKS SYSTEMS (SEC. 592 OF HOUSE BILL)

Present law

Section 465 of the Job Training Partnership Act authorizes the Secretary to establish and carry out nationwide computerized job bank and matching program.

House bill

The House bill amends Title V of the Job Training Partnership Act to authorize $50 million for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year for state job banks systems, to be made available by the Secretary through the United States Employment Service for the development and implementation of job bank systems in each state.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment authorizing the $50 million for fiscal 1989, instead of fiscal 1988.

4. DATA ON DISPLACED FARMERS AND RANCHERS (SEC. 593(a) OF HOUSE BILL)

House bill

The House bill amends section 462 of JTPA to require the Secretary, in coordination with the Secretary of Agriculture, to develop certain statistical data relating to farmer and rancher dislocation. This data is necessary for deriving the fourth factor to be added to the formula for allocating Title III funds among the States.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

C.—Miscellaneous Provisions

1. INTERNATIONALLY RECOGNIZED WORKER RIGHTS (SEC. 593(b) OF HOUSE BILL)

Present law

No provision.

House bill

The House bill requires the Secretary, in consultation with the Secretary of State, to study the extent to which other countries recognize and enforce internationally recognized worker rights, defined to include the right to association, the right to organize and bargain collectively, the right to be free from the use of compulsory labor, a minimum age for employment of children, and acceptable conditions of work with respect to minimum wages, maximum hours of work, and occupational safety and health. The House bill further authorizes for appropriation $5 million for fiscal year 1988 and each succeeding fiscal year, which shall be available to the Secretary of Labor for the purpose of entering into contractual or other appropriate agreements with the private sector for the purpose of monitoring activities, studies, and information-gathering which will enable trade unions abroad to provide information and comments to international organizations and other bodies on their respective governments' compliance with internationally recognized worker rights.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment. The Conference agreement adopts the House bill with respect to the required study by the Secretary of Labor. The Conference agreement does not include the appropriation of $5 million for contractual arrangements with private groups.

2. ADDITIONAL STUDIES (SEC. 593(C) OF HOUSE BILL)

Present law

No provision.

House bill

The House bill requires the National Commission for Employment Policy to conduct research related to worker readjustment, including the role of employment services and alternative techniques for managing production cutbacks without permanently reducing workforces, and to report to Congress no later than 18 months after enactment of this title.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

3. EMPLOYEE BENEFITS (SEC. 2203 OF SENATE AMENDMENT)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment gives the sense of the Senate that Senate committees secure objective analysis of, and report on, the impact of new employee benefits on employment, international competitives, and employees when committees report legislation requiring employers to provide new employee benefits.

Conference agreement

The Senate recedes.

4. PENSION PORTABILITY (SEC. 2204 OF SENATE AMENDMENT)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the Secretary, within six months after enactment of the legislation, to begin a study on pension portability for workers and to report to Congress no later than 24 months after enactment.

Conference agreement

The Senate recedes.

SUBTITLE E—ADVANCE NOTIFICATION OF PLANT CLOSING AND MASS LAYOFFS

Present law

There is no present law for this provision.

House bill

The House bill contains no comparable provision.

1. SHORT TITLE (SEC. 6401 OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment has no provision for a short title. The advance notification provisions were identified as Part B of the Economic Dislocation and Worker Adjustment Assistance Act.

Conference agreement

The Conference Agreement separates the advance notification provisions from the worker adjustment provisions of the Economic Dislocation and Worker Adjustment Assistance Act. Section 6401 of the Conference Agreement creates a new subtitle for the advance notification provisions. The short title for this subtitle is the Worker Adjustment and Retraining Notification ("WARN") Act. By separating the advance notification provisions from the worker adjustment provisions, the Conferees intend as an administrative matter for the WARN Act to be an original law, not an amendment to the Job Training Partnership Act. At the same time, the Conferees reaffirm that advance notice is an essential component of a successful worker readjustment program, and they regard the two subtitles as closely interrelated.

2. DEFINITIONS/EXCLUSIONS FROM DEFINITIONS (SECS. 331, 334 (1), (2) OF SENATE AMENDMENT; SEC. 6402 OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment defines the terms "employer," "plant closing," "mass layoff," "representative," "affected employees," "employment loss," "unit of local government," "part-time employee," and "seasonal employee."

The Senate Amendment includes exemptions from notification for plant closings or mass layoffs resulting from the sale or relocation of a business. Under the exemption for sales, no notice is required if the plant closing or mass layoff results from the sale of all or part of a business and the purchaser agrees, in writing, to hire substantially all affected employees with no more than a six-month break in employment. Under the relocation exemption, no notice is required if the plant closing or mass layoff results from a relocation of a business within a reasonable commuting distances and the employer offers to transfer substantially all affected employees to the new location with no more than a six-month break in employment.

Conference agreement

The Conference Agreement adopts the definitions in the Senate Amendment with the following modifications:

"Employer". The Conference Agreement retains the Senate Amendment language that the term "employer" means a business enterprise. The Conferees intend that a "business enterprise" be deemed synonymous with the terms company, firm or business, and that it consist of one or more sites of employment under common ownership or control. For exmaple, General Motors has dozens of automobile plants throughout the

country. Each plant would be considered a site of employment, but as provided in the bill, there is only one "employer"—General Motors.

"Plant Closing". The Conference Agreement strikes all references to "place of employment" and replaces them with "single site of employment." This change is intended to clarify that geographically separate operations are not to be combined when determining whether the employment threshold for triggering the notice requirement is met. For example, an automobile assembly plant on the east side of town and an assembly plant on the west side of town ordinarily would be two separate "sites of employment." On the other hand, an assembly plant on the east side of town that happens to extend to both sides of a public street is *not* two distinct "sites."

The Conferees otherwise retain the Senate language, but wish to clarify that a "temporary shutdown" triggers the notice requirement only if there are a sufficient number of terminations or layoffs exceeding six months, as specified under the definition of "employment loss."

"Mass Layoff". The Conference Agreement modifies the Senate Amendment so that the 33 percent requirement applies only to a mass layoff that involves more than 49 but fewer than 500 employees. Where the employment loss involves 500 or more employees, the 33 percent requirement would not apply, and notice would be required. The Conferees believe that layoffs involving 500 or more people are likely to cause significant economic disruption in local communities, as well as the obvious disruption for the individuals involved. Thus, the rationale for advance notice is strong—the need for individuals and communities to begin planning for dislocation before the dislocation occurs. The justification for a 33 percent requirement for layoffs before notice is required has been the representation by business interests that small layoffs of 50 or 100 or even 200 employees at a single site with a workforce of perhaps a thousand or more employees are such a regular part of business that requiring notice in these circumstances would be unduly burdensome. Because a layoff of 500 employees at a site of employment is a significant and unusual action, even in a large workforce of 2000 or more employees, the requirement of advance notice in these situations should not place an undue burden on employers.

"Employment Loss". The Senate Amendment includes two kinds of layoffs that would trigger the bill's requirements—those of indefinite duration and those of definite duration exceeding 6 months. The Conference Agreement combines these into a single triggering event—a layoff exceeding 6 months. The Senate Amendment includes within its definition of an employment loss a reduction in hours of more than 50 percent during any 6-month period. The Conference Agreement clarifies that this reduction in hours must occur in each of 6 consecutive months to be considered an employment loss. As an example, an employee who works less than half-time for five consecutive months, but who works full-time in the sixth, would not be considered to have experienced an employment loss.

"Part-time employee". The Senate Amendment defines a "part-time employee" as one who is hired to work an average of fewer than 15 hours per week. It also defines a "seasonal employee" as one who is hired for a period not to exceed 3 months per year to do work that is seasonal in nature. The Conference Agreement combines these concepts into a single definition of "part-time" employee, which includes employees who work fewer than 20 hours per week or who have worked fewer than 6 months in the 12-month period prior to the point at which the employer is required to serve notice. The definition of "seasonal employee" is therefore eliminated.

Exclusions from Definition of Employment Loss. The Conference Agreement incorporates the exemptions from notification for sales and relocations of a business in modified form as exclusions from the definition of "employment loss." Thus, a closing or layoff resulting from the sale of part or all of the employer's business does *not* give rise to an employment loss if

(a) the employee is covered at the time of the sale by a written rehire agreement between the buyer and the seller of the business to which the employee is explicitly made a third party beneficiary with rights against the purchaser under applicable state law; or

(b) the employee within 30 days after the sale is offered employment by the buyer.

In addition, a closing or layoff resulting from the relocation or consolidation of part or all of the employer's business does *not* give rise to an employment loss for a particular employee if, prior to the employee's termination or layoff,

(a) the employer offers to transfer that employee within a reasonable commuting distance; or

(b) the employer offers to transfer the employee to any other site of employment regardless of distance, and the employee accepts within 30 days of the offer or of the termination or layoff, whichever is later.

An example to which this may apply would be a situation where an employer owns five grocery stores in a metropolitan area. After deciding that one of the stores is no longer competitive, the employer decides to shut it down and makes a timely offer to transfer its employees to one or more of the remaining stores with no more than a six-month break in employment.

3. NOTICE REQUIREMENTS (SEC. 332(A) OF SENATE AMENDMENT; SEC. 6403(A) OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment requires 60 days notice in advance of a plant closing or mass layoff to affected employees (or their representative), to the State dislocated worker unit designated or created under the Economic Dislocation and Worker Adjustment Assistance Act, and to the chief elected official of the unit of local government where the closing or layoff occurs.

Conference agreeement

The Conference Agreement adopts the Senate provision.

4. REDUCTION OF NOTIFICATION PERIOD (SEC. 332(B) OF SENATE AMENDMENT; SEC. 6403(B) OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment provides for a reduction of the notification period in two specific circumstances. Under the "faltering company" exception, an employer actively seeking capital or business which would avoid or postpone indefinitely a shutdown, need not give the full 60 days notice if the employer reasonably and in good faith believes that notice would preclude the employer from obtaining the needed capital or business.

Under the second exception, the notice requirement is reduced if the closing or mass layoff is caused by business circumstances not reasonably foreseeable at the time notice would have been required. Both exceptions require the employer to give as much notice as is practicable and provide a brief statement of the basis for reducing the notice period.

Conference agreement

After some discussion, the Conferees agree to retain both exceptions, but wish to clarify the meaning of the Senate Amendment as follows:

Faltering Company. The provision would permit, under specifically defined circumstances, an employer to shut down one or more sites of employment without providing the full notice required by the bill. The defense is intended as a narrow one applicable only where it was unclear 60 days before the closing whether the closing would occur; the employer was actively pursuing measures that would avoid or indefinitely postpone the closing; and the employer reasonably believed both that it had a realistic opportunity of obtaining the necessary capital or business and that giving notice would prevent the employer's actions from succeeding.

The key phrases are first that the employer was "actively seeking capital or business"; second that, had the employer obtained this capital or business, it "would have enabled the employer" to prevent or forestall the shutdown; and third, that the employer "reasonably and in good faith believed" that giving the notice required would have precluded the employer from obtaining the necessary capital or business that it had a realistic opportunity to obtain. Thus, to avail itself of this defense an employer must prove the specific steps it had taken, at or shortly before the time notice would have been required, to obtain a loan, to issue bonds or stock, or to secure new business. This duty to seek capital or business falls on the employer, not the single site alone, and assumes that the employer lacks the necessary capital or business. Moreover, the employer must show the reasonable basis for its good-faith belief that giving the required notice would have prevented the employer from obtaining the capital or business that the employer had a realistic opportunity to obtain. Finally, the employer also must show that, upon learning that the workplace would be closed, it promptly notified the employees and explained why earlier notice had not been given.

Unforeseeable Business Circumstances. The Conferees recognize that there may be cases in which unforeseeable events necessitate a plant closing or mass layoff and it is not economically feasible to require the employer to give notice and wait until the end of the notice period before effecting the plant closing or mass layoff. For example, a natural disaster may destroy part of a plant; a principal client of the employer may suddenly and unexpectedly terminate or repudiate a major contract; or an employer may experience a sudden, unexpected and dramatic change in business conditions such as price, cost, or declines in customer orders. In these situations, the employer is required to give notice as soon as the closing or mass layoff becomes reasonably foreseeable, but the employer is permitted to implement the proposed closing or layoff without waiting until the end of the full notice period.

5. EXTENSION OF LAYOFF PERIOD (SEC. 332(C) OF SENATE AMENDMENT; SEC. 6403(C) OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment provides that a layoff of definite duration of less than six months that extends beyond six months shall be treated as a layoff of indefinite duration subject to notification unless (1) the extension is caused by business circumstances not reasonably foreseeable at the time of the initial layoff; and (2) notice is provided as soon as it is reasonably foreseeable that the extension is required.

Conference agreement

The Conference Agreement has eliminated the concept of a layoff of indefinite duration as was provided in the Senate Amendment. Therefore, the Conferees have modified the language of section 6403(c) to conform that section to the simplified definition in section 6402(a)(6). Employers operating under this provision lawfully may postpone giving notice until some time after a layoff has commenced *only* if they announced when ordering the layoff that the layoff would be for less than six months and if the employer proves that the layoff has been extended due to unforeseeable business circumstances.

6. DETERMINATION OF EMPLOYMENT LOSS (SEC. 333(C) OF SENATE AMENDMENT; SEC. 6403(D) OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment provides for the determination of a plant closing or mass layoff based on aggregation of smaller employment losses. Under the Amendment, employment losses at a single site for 2 or more groups of employees, each of which is less than 50 employees, but which in the aggregate total at least 50 employees, that occur within a 90-day period, will be considered a closing or layoff subject to notification, unless the employer demonstrates the employment losses result from separate and distinct actions and causes and are not an attempt to evade the notice requirements.

Conference agreement

Language has been added to conform this subsection to the definition of mass layoff that appears in section 6402(a)(3). The Conferees wish to clarify that the requirement that a mass layoff of 50 to 499 employees must affect 33 percent of the employees at a particular employment site also applies to this section. The "33 percent" requirement was inadvertently omitted from the language approved by the Senate. Thus, for example, an employer employing 300 workers at a single site which laid off 25 employees on each of four separate occasions within a 90 day period would presumptively be deemed to have implemented a mass layoff of more than 50 employees affecting 33 percent of the workforce. On the other hand, no such presumption would arise where the same employer laid off 20 employees on each of 4 occasions over the same 90-day period, because the "33 percent" requirement would not have been met.

7. EXEMPTIONS (SEC. 334 (3), (4) OF SENATE AMENDMENT; SEC. 6404 OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment exempts particular plant closings and mass layoffs from the notice requirements. No notice is required if the closing is a shutdown of a temporary facility or the mass layoff results from the completion of a particular project so long as the affected employees were hired with the understanding that the job was limited to the duration of the facility or project.

The Senate Amendment also exempts from the notice requirements those closings or layoffs that constitute a strike or a lockout.

Conference agreement

As discussed earlier in this Report, the Conference Agreement transforms two exemptions in the Senate Amendment—for sale and relocation of a business—into exclusions from the definition of "employment loss." The Conference Agreement retains the remaining two exemptions as exemptions with the following modifications:

Temporary Facility. The Conference Agreement adds language to clarify that this exception applies either to a closing or to a layoff. In addition, the Agreement clarifies that the exemption from the notice requirement is available where the closing or layoff is the result of the completion of a particular "undertaking," as well as a particular "project." Use of the term "project" in the Senate Amendment had been read by some as precluding its application to certain other temporary activities. The Senate floor debate included discussion of this exemption, and the Conferees felt that clarification of the intent of the Senate provision would be advisable.

There are two basic requirements for this exemption to apply. First, the employees in question must have been hired with the understanding that their jobs would last only until an obviously limited activity of the employer was completed. This condition must have been clearly stated to the employees at the time they begin work. Second, the work must in fact be temporary or limited. The Conferees do not intend that employers be able to avoid the notice requirement by a formal process of periodically telling workers that their jobs will last only until completion of a particular project or undertaking, when both employer and employees expect and intend to continue the employment relationship indefinitely.

Thus, floor statements by the sponsors of the bill in the Senate indicated that the exemption could apply to shipbuilding and overhaul projects where employees were hired with the requisite understanding and where the work is in fact only for the duration of a particular project. Although the precise date on which operations will cease sometimes cannot be specified at the beginning of the undertaking, the employees know that when the work is done, their jobs will lapse. Similarly, this exemption also applies where an employer hires employees for a specified and obviously limited term and the employees are informed in writing of the exact date of termination either at the outset or at some other point preceding the 60-day notice period.

Lookout. The Senate bill exempts closings and layoffs from the notice requirement when they constitute a strike or lockout. A lockout occurs when, for tactical reasons relating to collective bargaining, an employer refuses to utilize some or all of its employees for the performance of available work. The Conference Agreement clarifies that only lockouts not undertaken for the purpose of evading the notice requirements qualify for the exemption. An employer may not, for example, shut down an establishment and evade the notice requirement by calling the shutdown a lockout.

8. ADMINISTRATION AND ENFORCEMENT OF NOTICE REQUIREMENTS (SEC. 333(A), (B) OF SENATE AMENDMENT; SEC. 6405, 6408 OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment establishes enforcement mechanisms against an employer which fails to meet the notice requirements. An employee who suffers an employment loss and who does not receive timely notice (either directly or through the employee's representative) may bring a civil action against the employer. The employer would be liable for back pay for each day of the violation plus the cost of related fringe benefits for each day of the violation minus any earnings or related fringe benefits received from the employer during the violation period.

If the employer does not provide timely notice to the unit of local government, the employer would be subject to a civil penalty equal to $500 for each day of the violation. If more than one unit of local government has jurisdiction over the area in which the closing or layoff will occur, the employer must notify only the unit of local government to which the employer paid the highest taxes for the year preceding the year when the notice is required.

The Senate Amendment provides that a court may reduce an employer's liability to employees or an employer's penalty to the unit of local government if that employer demonstrates that it acted in good faith and had reasonable grounds for believing it was not violating the notice requirements.

The Senate Amendment includes venue and attorneys' fees provisions. A person seeking to enforce the liability provisions of this part may sue, individually or on behalf of others similarly situated, in any U.S. district court in a district in which the violation occurred or in which the employer transacts business. A court, in addition to any judgment awarded to plaintiffs under this section, may allow a reasonable attorneys' fee.

The remedies provided for in the Senate Amendment are the exclusive remedies available for violation of the notice requirements.

Conference agreement

The Conference agreement adopts the Senate provision with the following modifications:

Each day of violation. The Senate Amendment provides that an employer which violates the notice provisions of section 6403 is liable for back pay and a civil fine for "each day of violation." The Conferees wish to clarify that "each day of violation" is limited to the requisite notice period. Thus, the maximum violation period is 60 days, and it could be less depending upon the amount of notice given by the employer. For example, if the employer provides 20 days notice, then the maximum violation period for purposes of calculating back pay awards or civil fines would be 40 days. ("Violation period" refers to the period of time after a shutdown or layoff in violation of this Act, and extends for the number of days that notice was required but not given.)

Damage payments to employees. The Conference Agreement modifies the Senate Amendment language pertaining to offset. The Conferees wish to clarify that for each day of violation, an employer is liable to each aggrieved employee for the amount paid in wages and benefits to such employee prior to the layoff, as set forth in section 6405)a)(1). The Conferees also intend that

an employer may satisfy its liability with respect to benefits by paying the cash value of such benefits for the period of violation, subject to the offset provisions in section 6405(a)(2).

Under 6405(a)(2), the amount owed by the employer may be reduced through certain payments made by the employer for the period of the violation. An offset would occur if the employer's mass layoff involved a reduction in hours of 75 percent for 6 consecutive months, but the employer continued to pay the affected employees 25 percent of their wages. The offset provision also would apply if an employer offers employees a payment (in the absence of any legal obligation), in a voluntary and unconditional effort to ease the burden of termination or simply as a gesture of goodwill. (The Conferees wish to note here that damages are fully satisfied when an employer makes the payment prescribed in section 6405(3)). If the employer continues to make payments to a third party or trustee (such as premiums for health benefits or payments to a defined contribution pension plan), which are attributable to the employee for the violation period, the payments made also would offset the back pay remedy. Finally, with respect to the portion of benefit liability arising from a defined benefit pension plan, an employer could satisfy that portion of its liability by crediting the employee with service for all purposes for the period of the violation.

By contrast, payments owing because of written or oral agreement, and made on account of the employment loss, would not offset the back pay remedy. Such payments may include severance pay, pension benefits or any other kind of benefit that an employee is entitled to receive. These are benefits that are payable as compensation for past services because a layoff or shutdown has occurred, whether or not the terms of the layoff or shutdown actually violate the Act. In addition, they are benefits that an employee would not receive if employment had continued.

Further, the only payments that may offset the back pay remedy are those made by the violating employer. Wages received from another employer, or unemployment compensation payments received from the State, may not be used to offset the remedy.

Damage payments to local governments. The Conferees intend that employers which violate the notice requirements with respect to the affected unit of local government be subject to a civil penalty of up to $500 per day of violation. Thus, the maximum penalty payable to a local government is $30,000. In the event that a violation is found, a court in determining the amount of the penalty may take into account the severity of the violation, the employer's size, and the employer's ability to pay such a penalty. The Conferees further intend to provide an incentive and a mechanism for employers to satisfy their obligation to their employees in the event they fail to provide 60 days advance notice to their employees. An employer will be relieved of the $500-a-dy penalty to the local unit of government if it fully and promptly satisifies any financial liability to its employees under section 6405(a)(1). In order to avoid the payment to the unit of local government, an employer must complete full payment to its employees within 3 weeks from the point at which it orders a shutdown or layoff.

In addition, the Conferees agree that the Secretary of Labor should be authorized to promulgate regulations to ease administration and enforcement of the WARN Act. The Conference Agreement recognizes that interpretive regulations could play a constructive role in the implementation of this legislation.

Although the Department of Labor does not have an enforcement role, the Agreement authorizes the Secretary of Labor to promulgate regulations as he or she deems necessary. At a minimum, these regulations must prescribe standards governing the service of notice to affected employees. The Conferees intend that an employer be diligent in its effort to notify a representative of employees or the employees themselves. At the same time, the Conferees do not expect an employer to go to extraordinary and unreasonable lengths to notify each and every employee. For example, a mailing to the current addresses of employees might suffice, even though a few employees might have moved unbeknownst to the employer.

9. RELATION TO OTHER RIGHTS (SEC. 335 OF SENATE AMENDMENT; SEC 6406 OF CONFERENCE AMENDMENT)

Senate amendment

The Senate Amendment provides that the rights and remedies provided under the advance notification provisions are in addition to any other contractual or federal statutory rights and remedies available to affected employees.

Conference agreement

The Conference Agreement provides that with one exception the rights and remedies provided under the advance notification provisions do no preempt or displace rights and remedies provided under other statutes or under contractual agreements. The Conferees are aware that many legal issues related to plant closings and mass layoffs currently may be addressed under collective bargaining agreements and some of these same issues also may be dealt with under state or other federal law. *See, e.g., Fort Halifax Packing Company* v. *Coyne,* 107 D. Ct. 2211 (1987) (ERISA does not preempt state law prescribing severance pay). The Conferees intend that the effect of these other laws and contracts should not be disturbed by the new federal provision. The only qualification to this rule involves the length of notice before a plant shutdown, the 60-day requirement contained in this bill will run concurrently with the 90-day requirement under state law. Similarly, if a collective bargaining agreement requires that an employer give 120 days notice before closing a plant, the new 60-day requirement will run concurrently with the longer contractual notice period.

10. SENSE OF THE CONGRESS ON NOTICE (SEC. 336 OF SENATE AMENDMENT; SEC. 6407 OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment expresses the sense of Congress that an employer not required by this Act to provide advance notice of a plant closing or mass layoff is encouraged to provide advance notice irrespective of its obligations under federal law.

Conference agreement

The Conference Agreement adopts the Senate provision.

11. EFFECT ON OTHER LAWS (SEC. 338 OF SENATE AMENDMENT; SEC. 6409 OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment provides that an employer attempting in good faith to comply with the advance notice provisions of the Act cannot be found in violation of the National Labor Relations Act or the Railway Labor Act.

Conference agreement

The Conference Agreement adopts the Senate provision.

12. EFFECTIVE DATE (SEC. 337 OF SENATE AMENDMENT; SEC. 6410 OF CONFERENCE AGREEMENT)

Senate amendment

The Senate Amendment provides that the advance notice requirements established by the Act shall become effective six months and two days after the date of enactment.

Conference agreement

The Conference Agreement adopts the Senate provision with two minor changes. The effective date of the advance notice provisions is changed to six months after the date of enactment. In addition, the Conference Agreement provides that the authority granted to the Secretary of Labor to prescribe regulations to carry out the advance notice provisions is effective upon the date of enactment.

PART F—NATIONAL SCIENCE FOUNDATION UNIVERSITY INFRASTRUCTURE

1. Section 571 of the bill amends Title VII of the Higher Education Act (HEA) by adding a new Part I, The College and University Research Facilities and Instrumentation Modernization Program (hereafter referred to as the "Program"). The Senate bill has no comparable provision.

House recedes with an amendment creating an academic research facilities modernization program and a college science instrumentation program at the National Science Foundation.

Title I (b)

The conferees mean by the term "independent non-profit research institution" those institutions in that category that have traditionally been eligible for NSF grants, such as research institutes. The conferees expect NSF to specify further which institutions will be eligible for facilities grants as part of the interim guidelines to be published in the Federal Register pursuant to subsection (d).

Title I (c)

The conferees agree that proposals submitted under Title I will be subject to merit review following NSF's current procedures. The merit review panels must include representatives from a mix of institutions reflective of the variety of U.S. institutions eligible for receiving funding under this program. The conferees are particularly concerned that universities that have not traditionally been large recipients of NSF grants be represented on the panels.

In determining the appropriate non-federal share for an institution, NSF should take into account the relative financial strength of the institution. However, under no circumstances may the non-federal share be less than 50 percent. As minority institutions may have difficulty raising funds and may have small endowments, NSF may allow such institutions to provide a portion of their 50 percent match with in-kind services. A minority institution is defined in subsection (f)(2).

Title I (d)

In using the term "mission of the National Science Foundation," the conferees are including the Foundation's obligation to remedy deficiencies in national and regional research needs. The conferees wish to

remind NSF of the dual mission in its Organic Act (42 USC 1862) "to strengthen research and education in the sciences and engineering" and "to avoid undue concentration of such research and education."

The conferees have required NSF to define the terms "facilities, instrumentation, equipment, repair, renovation, and replacement" to ensure that there is no confusion over eligibility for funding. The conferees intend that only those items defined as "facilities" be eligible for repair, renovation and replacement projects funded under the Academic Research Facilities Modernization Program. NSF should make clear in the Federal Register notice whether such support systems as heating, ventilation and air conditioning fall into this category.

Title II (b)

The conferees define "non-Ph.D. granting institution" as those institutions that offer a baccalaureate degree, but do not award any doctoral degrees in any fields eligible for NSF funding.

Title II (c)

The conferees agree that proposals submitted under Title II will be subject to merit review following NSF's current procedures. The merit review panels must include representatives from a mix of institutions reflective of the variety of U.S. institutions eligible for receiving funding under this program. The conferees are particularly concerned that two-year and non-Ph.D. granting institutions be represented on the panels.

Title II (g)

As funds have been provided under the continuing resolution for FY88 for CSIP, the conferees have provided no further authorization. However, out-year funding will be subject every year thereafter to the authorizations and appropriations of activities for the National Science Foundation. The conferees strongly support the goals of the CSIP program for the support and enhancement it provides to non-Ph.D. granting institutions.

Reports

Any reports on the programs created by these titles should be made available to the House Committee on Science, Space, and Technology, the House Committee on Education and Labor, the Senate Committee on Labor and Human Resources and the Senate Committee on Commerce, Science, and Transportation.

TITLE VII—BUY AMERICAN ACT OF 1988

SECTION 7001—SHORT TITLE

House bill

Buy American Act of 1987.

Senate amendment

No provision.

Conference agreement

Buy American Act of 1988.

SECTION 7002—AMENDMENTS TO THE BUY AMERICAN ACT

Present law

Title III of the Act of March 3, 1933 (the Buy American Act) requires the Federal Government to buy domestic products unless such purchases are inconsistent with the public interest or their costs are unreasonable.

Regulations implementing this law apply a 6 percent price differential in favor of domestic sources (12 percent if a small business or labor surplus area is involved) and a 50 percent differential for Department of Defense procurements. These price differentials may be waived under section 301(a) of the Trade Agreements Act of 1979 for articles covered by the GATT Government Procurement Agreement (Agreement) from signatory countries. The price differentials do not apply to Defense procurement from allies covered by reciprocal Memoranda of Understanding on procurement.

(1) PROCUREMENT PROHIBITION

House bill

The House bill adds a new section to the 1933 Act which prohibits Federal agencies from procuring goods produced in foreign countries whose governments discriminate against U.S. products or services in awarding contracts. Such countries would be identified in an annual report required by this bill.

The prohibition requirements do not apply to signatory countries in "good standing" to the Government Procurement Agreement and not subject to revocation of waivers as determined by the bill. Firms offering goods from these countries can participate in procurements covered by the Agreement without the Buy American price differentials and in other procurements subject to these price differentials.

Suppliers offering goods produced in other countries that do not discriminate against U.S. goods or services would continue to sell to the Federal Government in accordance with the provisions of Title III of the Act of March 3, 1933 (the Buy American Act) with existing price differentials. These countries would continue to be prohibited from participating in procurements covered by the Agreement pursuant to Title III of the Trade Agreements Act of 1979.

Senate amendment

No provision.

Conference agreement

The conference agreement prohibits U.S. government procurement of products and services from (1) signatories "not in good standing" to the Agreement, (2) signatories that discriminate against U.S. firms in the signatory governments' procurement of products or services not covered by the Agreement, and (3) nonsignatories whose governments discriminate against U.S. products or services in their procurement.

The conference agreement establishes standards to determine whether U.S. procurement prohibitions are to be imposed on products or services of countries that discriminate on procurements not covered by the Agreement. In these cases, prohibitions are to be imposed when a foreign government, in conducting procurements, maintains a significant and persistent pattern or practice of discrimination against United States products or services; moreover, the pattern or practice of discrimination must result in identifiable harm to United States businesses.

(2) Exceptions to the Procurement Prohibitions

House bill

Authorizes Federal agencies, notwithstanding the prohibition requirements of this section, to purchase goods from a least developed country, as the term is defined in Section 308(6) of Title III of the Trade Agreements Act of 1979.

Authorizes the President or head of a Federal agency, notwithstanding the prohibition requirements of this section, to award contracts or classes of contracts to suppliers offering goods from countries whose governments have been identified as discriminating against U.S. goods or services, if he (1) determines that such action is necessary in the public interest or to avoid the creation of a monopoly for a single manufacturer or supplier, and (2) notifies Congress of such determination not less than 30 days prior to awarding the contract or the date of authorization of the award of a class of contracts.

In no case shall Federal agencies deny the award of a contract or class of contracts for products from a discriminatory country when such denial would (1) limit the procurement in question to the products of a single supplier, or (2) establish a preference for the products of a single supplier.

The authority of the heads of Federal agencies to make exceptions to the procurement prohibitions and provide notices to the Congress may not be delegated.

Further, in the case of procurements awarded under authority of Defense Department Memoranda of Understanding with foreign governments, only the President or, if delegated, the United States Trade Representative may make the determinations and provide notices to the Congress necessary to waive the prohibition requirements against countries identified as discriminatory.

Senate amendment

No provision.

Conference agreement

The conference agreement maintains the House bill's exemption from the procurement prohibition for least developed countries. It also exempts products and services procured and used by the Federal government outside the United States and its territories. The conferees believe this exemption is necessary to ensure that the overseas operations of Federal agencies, particularly the Department of Defense, are not unnecessarily disrupted by the imposition of a procurement ban.

As discussed above, the conference agreement requires the President to identify as discriminatory those countries which are signatories in compliance with the Government Procurement Agreement, but which discriminate in their government procurement of products or services not covered by the Agreement. Under these conditions, Federal agencies would be prohibited from procuring only non-Agreement covered products from these countries. To ensure that Agreement-covered procurements are not affected in these situations, the conference agreement includes language which exempts the "eligible products" of such country from the procurement ban unless that country has also been designated as a signatory "not in good standing."

The conferees recognize that the President and the heads of Federal agencies may need to waive the procurement prohibitions to avoid substantial disruption of Federal programs or threats to national security. The conference agreement, therefore, retains the House bill's provisions providing for waivers, on a contract-by-contract or class of contracts basis, when they are in the public interest or to avoid the creation of a monopoly situation.

In addition to these waiver provisions, the conferees have added a third waiver which allows the President or head of a Federal agency to authorize the award of a contract or class of contracts, notwithstanding a prohibition, if insufficient competition exists to assure the procurement of products or services of requisite quality at competitive prices.

The conference agreement requires, under normal circumstances, notification to Congress not less than 30 days before the President or head of a Federal agency waives the prohibition on a contract or class of contracts. In cases in which an agency's need for a service or products is of such urgency that the United States would be seriously injured by delaying the award or authorization, the conference agreement allows for the Congressional notification to be made not more than 90 days after the date of such award or authorization.

Furthermore, in the case of procurements awarded under authority of Department of Defense Memoranda of Understanding (MOUs) with foreign governments, the conference agreement allows the President to delegate the authority to waive sanctions for a contract or class of contracts to the Secretaries of Defense, Army, Navy, or Air Force. If delegated to one of these Secretaries, however, the determinations will be subject to review and policy guidance by the interagency Trade Policy Committee, chaired by the United States Trade Representative.

The conferees understand that MOUs exist principally for reasons of national security. The conferees believe, however, that it is possible to take actions for national security reasons which are consistent with U.S. trade policy goals. The conferees intend that the Secretary of Defense and the United States Trade Representative consult with one another to determine methods for achieving greater cooperation between them for the purpose of promoting increased reciprocity for U.S. suppliers seeking access to the government procurement markets of foreign countries participating in the Department of Defense MOU programs.

(3) Rule of Origin

House bill

Current law defines U.S.-made products as those manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. Under current regulatory guidelines, "substantially all" has been defined to mean that more than 50 percent of the component costs of a product has been incurred in the United States.

The House bill amends current law in such a way that other costs in addition to component costs are to be considered in determining a product's origin. Essentially, goods would be treated as U.S.-made when (1) they have been assembled or manufactured in the United States and (2) substantially all of the total costs (including components, indirect costs, research, development, and labor) of the product has been incurred in the United States.

Senate amendment

No provision.

Conference agreement

The conference agreement retains current law and current regulatory guidelines for determining whether a product is U.S.-made. However, the conferees recognize that changes may be needed to modify the Buy American Act's rule of origin. The conference agreement, therefore, directs the Administrator of the Office of Federal Procurement Policy (OFPP) to conduct an assessment of all factors that should be considered in making determinations of whether a product originates in the United States.

The Administrator's assessment shall identify and evaluate reasonable alternatives to the current rule of origin, including one or more alternatives that require a determination on the basis of total cost, and the specific cost factors that should be included. In conducting the analysis, the Administrator is directed to (1) consult and seek comment from representatives of the public, business, labor, and other Federal agencies, and (2) hold public hearings, the transcripts of which shall be included in the final report. The Administrator is to submit the final report to Congress not later than 18 months after the date of enactment; the report shall include proposed policy guidance and any recommended legislative changes that may be necessary or appropriate to modify the rule of origin.

Current rule of origin regulations issued under the Buy American Act do not apply to services. Since the procurement prohibitions in the conference agreement cover services, the conference agreement directs the Administrator of OFPP to hold public hearings and, not later than 180 days after enactment, to prescribe policy guidance to be followed by Federal agencies in awarding service contracts except for construction service contracts. With regard to construction service contracts, the conference agreement specifies that a contractor or subcontractor is considered to be owned or controlled directly or indirectly by citizens or nationals of a foreign country if:

(1) 50 percent or more of the voting stock is owned by citizens or nationals of a foreign country,

(2) 50 percent or more of the stock is held by citizens or nationals of a foreign country,

(3) the number of directors necessary to constitute a quorum are citizens or nationals of a foreign country,

(4) the corporation is organized under the laws of a foreign country, or

(5) any participant in a joint venture meets the above criteria.

SECTION 7003—PROCEDURES TO PREVENT GOVERNMENT PROCUREMENT DISCRIMINATION

Present law

Title III of the Trade Agreements Act of 1979 (P.L. 96-39) ("the Act") made changes in U.S. law required to implement the GATT Government Procurement Agreement. The Act (1) permits the President to waive the Buy American Act price differentials for procurements covered by the Agreement, (2) specifies the circumstances in which the President can designate a foreign country as eligible for such a waiver, and (3) for contracts covered by the Agreement, prohibits U.S. government procurement of products from countries without waivers.

1. Annual report on foreign compliance

House bill

The President is required to submit to Congress no later than December 31, 1988, and annually thereafter, a report on the extent to which foreign countries, whose products are acquired by the United States Government, discriminate against U.S. products or services in conducting government procurements. The President must identify in the report (1) the signatory countries to the Government Procurement Agreement that are not in compliance with its requirements and (2) the nonsignatory foreign countries (other than least developed countries) that discriminate against U.S. products or services in awarding government contracts.

Senate amendment

No provision.

Conference agreement

The conference agreement requires the President to 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, no later than April 30, 1990, and annually thereafter, a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurements. The President must identify in the report the following countries (except if these are least developed countries):

(1) signatories to the Agreement that are not in compliance with its requirements;

(2) signatories to the Agreement whose products and services are acquired in significant amounts by the United States Government, who are in compliance with the Agreement, but who, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination which results in identifiable harm to U.S. businesses; and

(3) nonsignatories whose products or services are acquired in significant amounts by the U.S. Government, and who maintain, in their government procurement, a significant and persistent pattern or practice of discrimination which results in identifiable harm to U.S. businesses.

The first annual report date was changed to April 30, 1990, and the date for subsequent annual reports was changed to April 30th, to ensure that the executive branch has adequate time to obtain evidence of sufficient quantity and quality to identify those countries that are not in compliance with the Agreement or otherwise discriminate against U.S. products and services and to coordinate with reporting requirements associated with the annual *National Trade Estimate Report on Foreign Trade Barriers* required by Section 303 of the Trade and Tariff Act of 1984 (19 U.S.C. 2241), which will be due on March 31st of each year.

The conference agreement limits those countries that can be named in the annual report to Agreement signatories and those countries from which the U.S. government acquires a significant amount of goods or services. The conferees intend that the annual report cover only those countries which discriminate according to the standards established in this act. This is to permit the executive branch to focus its efforts on those countries over which the United States can exercise some leverage in encouraging them to open their government procurement markets to U.S. competition. The conferees expect the President to include in the report an analysis of the procurement policies and practices of each country named and a discussion of the most effective way to use U.S. Government procurement policy leverage to open government procurement in those countries to American competition.

The conference agreement also provides greater guidance on the types of noncompliance with the Agreement or discrimination against U.S. products or services that would warrant a country being identified in the annual report. The conferees expect that, for a country to appear in the annual report due to discrimination outside the Agreement, the discrimination must represent a significant and persistent pattern or practice. Accordingly, the President would not be required to place in the annual report

countries that have only committed minor, isolated discrimination.

2. Contents of Annual Report

House bill

In developing the annual report, the President is required to:

(1) use the requirements of the Government Procurement Agreement as guidelines for evaluating whether the procurement practices of foreign countries discriminate against U.S. products and services;

(2) include the evaluation of, among other factors, whether and to what extent countries included in the report use certain specific government procurement practices listed in the bill that would violate the Agreement;

(3) take into account the relative impact of any noncompliance with the Agreement or other discrimination by a nonsignatory on United States commerce and the extent to which such noncompliance or discrimination has impeded the ability of U.S. suppliers to participate in procurements covered by the Agreement;

(4) seek the advice of the U.S. Trade Representative, the Secretary of Commerce, and U.S. businesses in the United States an abroad; and

(5) include an analysis of the impact on Federal procurement costs that may result from any waiver revocations or other procurement prohibitions imposed against countries identified as discriminating against U.S. goods and services.

Senate amendment

No provision.

Conference agreement

The conference agreement requires the President, in identifying countries in the annual report, to take into account:

(1) the requirements of the Agreement, foreign government procurement practices, and the effects of such practices on U.S. businesses as a basis for evaluating whether the procurement practices of a foreign government do not provide fair market opportunities for United States products or services;

(2) whether and to what extent countries included in the report use certain specific discriminatory government procurement practices listed in the bill that either violate the Agreement or otherwise block U.S. firms from participating in government procurements, and use any other additional criteria deemed appropriate;

(3) the information and advice of executive agencies through the Trade Policy Committee, and information from U.S. businesses in the United States and abroad; and

(4) the relative impact of any noncompliance or discrimination on U.S. commerce and the extent to which such noncompliance or discrimination has impeded U.S. suppliers' ability to participate in foreign government procurements on terms comparable to the particular foreign country's firms' ability to participate in U.S. government procurements.

In addition to a description of these decisive factors, the annual report shall include, for each country named:

(1)(a) a description of the specific nature of the discrimination and, for signatories, a description of any provision of the Agreement with which the country is not in compliance, (b) an identification of the U.S. products and services affected, (c) an analysis of the impact of the noncompliance or discrimination on United States commerce and businesses, and (d) a description of status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report; and

(2) an analysis of the impact on Federal procurement costs that may occur as a consequence of waiver revocations or prohibiting the purchase of products or services from a country identified as discriminating against U.S. goods and services.

In developing the annual report, executive branch officials should, among other things, review publicly available information on foreign government procurements, particularly those covered by the Government Procurement Agreement. To obtain information from businesses, they may (1) seek information from the Private Sector Advisory Committees established in the Trade Act of 1979, (2) place a notice in the *Federal Register* requesting information from U.S. businesses and (3) instruct the commercial staffs at the U.S. embassies to seek information from the in-country American business communities. The Office of the U.S. Trade Representative may draw on resources of the Departments of Commerce and State, particularly at overseas posts, in compiling the information.

3. Consultations after issuance of annual report

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conferees believe that the executive branch should make a strong effort to resolve any problems identified in the annual report before initiating dispute settlement with signatories to the Government Procurement Agreement or imposing procurement prohibitions on countries that discriminate against U.S. products or services on procurements not covered by the Agreement. The Conference agreement requires that, no later than the date the annual report is submitted, the U.S. Trade Representative shall request consultations with any country identified in the annual report, unless the country was also identified in the preceding annual report.

4. Use of dispute settlement procedures to correct noncompliance with the Government Procurement Agreement

House bill

The President is required, within 60 days after issuance of the annual report, to initiate consultations in accordance with the Government Procurement Agreement's dispute settlement procedures to correct any problems with compliance with the Agreement by signatory countries identified in the annual report. When a dispute settlement procedure initiated under this section is not concluded within one year or has concluded and the other country has not taken action required as a result of the procedures to the satisfaction of the President, the President shall revoke the waiver granted under section 301(a) of the Trade Agreements Act of 1979. The President shall take no action to limit procurement from the other participant to the dispute settlement procedure if, before the end of the year following the initiation of dispute settlement (1) the other participant has eliminated the discriminatory practice to the satisfaction of the President, (2) the other participant has taken action recommended as a result of the procedures, or (3) the procedures result in a determination requiring no action by the other participant.

Senate amendment

No provision.

Conference agreement

The conference agreement requires that, if a signatory country identified as not being in compliance with the Agreement has not complied with the Agreement within 60 days after issuance of the annual report, the U.S. Trade Representative shall request proceedings on the matter in accordance with the Agreement's formal dispute settlement procedures, unless such proceedings are already underway pursuant to an identification in a preceding annual report. When a dispute settlement procedure initiated under this section is not concluded within one year, or has concluded and the other country has not taken action required as a result of the procedures to the satisfaction of the President, the President shall revoke the waiver granted under section 301(a) of the Trade Agreements Act of 1979. The President shall take no action to limit procurement from the other participant to the dispute settlement procedures if, before the end of the year following the initiation of dispute settlement, (1) the other participant has complied with the Agreement, (2) the other participant has taken action recommended as a result of the procedures to the satisfaction of the President, or (3) the procedures result in a determination requiring no action by the other participant.

5. Termination of sanctions and reinstatement of waivers

House bill

The President may reinstate a revoked or modified waiver if (1) the other participant has eliminated the discriminatory practice to the satisfaction of the President, (2) the other participant has taken action recommended as a result of the dispute settlement procedures, or (3) the procedures result in a determination requiring no action by the other participant.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

6. Procurement prohibitions against nonsignatories to the Government Procurement Agreement

House bill

The procurement prohibitions imposed on nonsignatories to the Government Procurement Agreement identified in the annual report as discriminating are effective immediately upon issuance of the report.

Senate amendment

No provision.

Conference agreement

The conference agreement requires that, within 60 days after issuance of the annual report, the President must impose the procurement prohibitions on any country which is identified in the annual report as discriminating on procurements not covered by the Agreement and which has not eliminated its discriminatory procurement practices. The conference agreement also authorizes the President to terminate sanctions and remove a country from the annual report at such time as he determines that the country has eliminated its discrimination.

The 60 day delay instituted in the conference agreement conforms with the consultation period included in the conference

agreement requiring the U.S. Trade Representative to initiate consultation with countries identified in the annual report before imposing the sanctions or initiating dispute settlement procedures. The conferees expect that the President will fully utilize the 60 day period to convince foreign governments to remove their discriminatory procurement practices so as to avoid the imposition of sanctions.

7. Limitations on imposing sanctions

House bill

If the President determines that revoking the waiver granted to an Agreement signatory or imposing a prohibition of procurement on a non-signatory country would harm the public interest of the United States, he may withhold waiver revocation or total prohibition but must impose appropriate and equivalent limitations on procurement consistent with the Buy American Act and full and open competition. The President shall not take any action that would limit procurement to, or create a preference for, products or services of a single supplier. In taking any action to limit procurements, the President must seek advice from executive agencies through the Trade Policy Committee and from U.S. businesses and other interested parties.

Senate amendment

No provision.

Conference agreement

The conference agreement gives the President added discretion to modify a waiver revocation or procurement prohibition and clarifies that (1) the President may take such action at any time, and (2) the sanctions imposed should be equivalent in effect to the discrimination against U.S. products or services by the foreign country.

More specifically, the conference agreement provides for the President, if he deems it to be in the public interest, to modify or restrict the prohibition on procurement and impose, instead of a country-wide ban, other limitations considered to be appropriate.

In addition, the conference agreement prohibits the President from taking any action if it would (1) limit U.S. government procurement to, or create a preference for, products or services of a single supplier or (2) create a situation where there could be, or are, an insufficient number of potential or actual bidders to assure U.S. government procurement of goods or services of requisite quality at competitive prices.

The conferees recognize that a waiver revocation or prohibition on procurements from a particular country may not always be in the public interest of the United States. It is also recognized that the President needs the discretion to be able to not invoke a waiver revocation or procurement prohibition either when a prohibition would limit procurement to a single supplier or when it would create a situation where there would be an insufficient number of bidders to ensure procurement of goods or services of requisite quality at competitive prices.

8. Renegotiation to secure full and open competition

House bill

Requires the U.S. Trade Representative, in conducting renegotiation of the Government Procurement Agreement, to seek improvements that would secure full and open competition consistent with the requirements imposed by amendments made by the Competition in Contracting Act of 1984.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

9. General report to the Congress

House bill

The President shall advise the Congress as necessary and submit to Congress December 31, 1993, a general report on actions taken under this section and an evaluation of progress by foreign countries toward eliminating discriminatory government procurement practices.

Senate amendment

No provision.

Conference agreement

The conference agreement requires that the President shall advise the Congress and no later than April 30, 1994, submit to the Congress a general report on actions taken pursuant to this section. This report shall include (1) an evaluation of the adequacy and effectiveness of actions taken pursuant to this section as a means toward eliminating foreign discriminatory government procurement practices against U.S. businesses and, if appropriate, (2) legislative recommendations for enhancing the usefulness of this section or for any other measures to be used as a means for eliminating or responding to discriminatory foreign-government procurement practices.

SECTION 7004—SUNSET PROVISION

House bill

No provision.

Senate bill

No provision.

Conference agreement

The conference agreement requires that the amendments made by this title shall cease to be effective on April 30, 1996 unless extended by Congress before this date.

TITLE VIII—SMALL BUSINESS

1. SHORT TITLE. (SEC. 8001) (TITLE XIII, SEC. 1301 OF HOUSE BILL) (TITLE XXXIX, SEC. 3901 OF SENATE AMENDMENT)

House bill

Small Business Trade, Competitiveness and Innovation Act.

Senate amendment

Small Business International Trade and Competition Enhancement Act.

Conference agreement

Small Business International Trade and Competitiveness Act.

2. DECLARATION OF POLICY. (SEC. 8002) (SEC. 1302 OF HOUSE BILL) (SEC. 3902 OF SENATE AMENDMENT)

Present law

Section 2 of the Small Business Act (15 U.S.C. 631) delineates the policies of Congress that the Small Business Administration (SBA) must implement.

House bill

Establishes that it is the policy of Congress that the Federal Government, through the SBA, should assist small businesses to improve their ability to compete in international markets by: (1) enhancing their ability to export; (2) facilitating technology transfers; (3) enhancing their ability to compete against imports; and (4) increasing their access to long-term capital.

Senate amendment

Similar provision with the addition of: (5) disseminating information on State, Federal, and private programs designed to enhance the ability of small business to compete in international markets; and (6) ensuring that small business interests are represented in international trade negotiations.

Also adds another provision which states that the Congress recognizes that the Department of Commerce is the principal agency for trade development and export promotion, and that SBA and the Department of Commerce are to work together to advance, not alter, their respective roles in trade-related activities.

Conference agreement

Conference agreed to the Senate language.

3. CHANGES IN EXISTING SBA INTERNATIONAL TRADE OFFICE. (SEC. 8003) (SECS. 1303 AND 1304 OF HOUSE BILL) (SECS. 3903 AND 3905 OF SENATE AMENDMENT)

3(A). OFFICE OF INTERNATIONAL TRADE

Present law

Section 22 of the Small Business Act (15 U.S.C. 649) establishes an Office of International Trade in SBA to promote sales opportunities for U.S. small business goods and services in foreign markets.

House bill

(1) The Office of International Trade is required to work with the Department of Commerce and other relevant public and private organizations and the Small Business Development Center (SBDC) network, to:

(a) develop a distribution network for existing trade-related programs, and

(b) aggressively market those programs and provide marketing information.

(2) The Office of International Trade is required to assume additional functions including:

(a) working with the Department of Commerce and other relevant public and private organizations to (I) identify subsectors of the small business community with strong export potential; (II) identify areas of demand in foreign markets; (III) prescreen foreign buyers for commercial and credit purposes; (IV) disseminate information on marketing leads, linking potential buyers and sellers and catalyzing the formation of joint ventures;

(b) work with the Department of Commerce to develop export trading companies, export management companies and research and development pools;

(c) establish a pilot program to: (I) identify translation services; (II) identify multilingual SBA employees; and (III) establish a full-time SBA position with responsibility for translating documents submitted by a small business and accompanying trade missions;

(d) work with the Department of Commerce to: (I) develop a mechanism for the collection and dissemination of information on the small business share of U.S. exports, and the nature of State exports; (II) make recommendations to the Secretary of Commerce on SIC code revisions; (III) improve the utility and access of existing export promotion programs for small businesses; and (IV) increase access to the Export Trading Company facilitating service;

(e) make available information on public and private conferences on small business issues, including international conferences;

(f) work with the Export-Import Bank and other relevant public and private organizations to: (I) aggressively market existing SBA export financing programs; (II) aggressively market various Export-Import Bank

programs; (III) assist in the development of financial intermediaries and facilitate the access of those intermediaries to existing financing programs; (IV) promote greater participation by private financial institutions in export finance; and (V) provide appropriate SBA employees with training in Export-Import Bank programs;

(g) establish a Trade Assistance Division to: (I) assist small businesses to prepare for trade remedy proceedings; (II) assist small business to collect appropriate data for trade remedy proceedings; (III) work with the Department of Commerce, the USTR, and the ITC, to increase and facilitate access to trade remedy proceedings for small businesses; and

(h) report semiannually to Congress on the progress of the International Trade Office in implementing its new mandates.

Senate amendment

(1) Similar provision except replaces the term "Small Business Development Centers" as used in the House version with a new term, "Small Business Export Assistance Centers". Small Business Export Assistance Centers (SBEACs) are newly created entities that could compete with SBDCs for funding to provide trade-related services.

(a) Similar provision.

(b) Similar provision.

(2) Similar provision.

(a) Similar provision. (I) Similar provision. (II) Similar provision. (III) No similar provision. (IV) Similar provision, except deletes the requirements of catalyzing the formation of joint ventures.

(b) Similar provision.

(c) Does not establish a pilot program. (I) Does require the identification of transition services. (II) No similar provision. (III) No similar provision.

(d) Similar provision. (I) Does not require the development of a mechanism for the collection of such information, but requires that such information be disseminated. (II) Similar provision. (III) Similar provision. (IV) Similar provision.

(e) Requires only that information on trade and export conferences be made available. Deletes specific mention that information on both public and private conferences must be disseminated.

(f) Similar provision with the additional requirement that SBA facilitate small businesses access to private sector sources of financing as well as to existing financing programs. (I) Similar provision. (II) Similar provision. (III) Similar provision. (IV) Similar provision. (V) Similar provision.

(g) Does not establish Trade Assistance Division. Does require the Office of International Trade to work with Federal agencies and the private sector to counsel small businesses on initiating and participating in trade remedy proceedings and to work with the Department of Commerce, the USTR, and the ITC to increase access to trade remedy proceedings for small businesses. (I) No similar provision. (II) No similar provision. (III) Limited to increasing access to trade remedy proceedings. Deletes the requirement to facilitate such access.

(h) Annual report required on April 1.

Conference agreement

(1) Conference agreed to House language.

(2) Conference agreed to House language.

(a) Conference agreed to House language.

Under the agreed upon language, the SBA Office of International Trade will be required to "prescreen foreign buyers" and to "catalyze joint ventures." While the Committee does not expect the Office to develop the in-house capabilities needed to provide these services, it strongly believes that the Office should be aware of and involved with such trade-related assistance. It is innovative services such as these which can be extremely useful in assisting small businesses to enter international markets.

By "prescreening" the Committee means that SBA should be familiar with credit checking agencies overseas, such as the European Credit System, or domestic agencies that have the ability to run credit checks on foreign buyers, and should assist small business exporters access such services and obtain useful credit information. It is the understanding of the Committee that the Department of Commerce, through its foreign offices, has or can easily obtain such sources of information.

By "catalyzing joint ventures" the Committee means that SBA should maintain a system for matching domestic small businesses and foreign companies that may have mutually beneficial interests. Information about potentially compatible firms may be obtained through the Department of Commerce listings of U.S. exporters and foreign buyers; State international trade agencies; Small Business Development Centers; or direct inquiries made to the SBA. As made clear in the American Business Conference report, *Winning in the World Market,* joint ventures are a major way for smaller companies to gain access to foreign markets.

(b) Language retained.

(c) Conference agreed to Senate language with amendment. The Office of International Trade is required to: (I) give preference to multilingual individuals when filling personnel slots, and (II) allow such individuals to translate documents, interpret conversations, accompany trade missions, and provide referrals to existing translation services.

In addition, the Conference Committee directs SBA to establish a system to reimburse employees of the Office of International Trade for the cost of undertaking the study of a second language. Having proficient multilingual employees in the Office of International Trade could greatly increase its effectiveness and utility, and could help advance the purposes of this title. The Committee expects, therefore, that concrete efforts will be made to increase the number of such employees within the Office.

In carrying out this directive, SBA should rely upon existing foreign language study programs available to Federal employees. It is the Committee's understanding, for example, that the Department of Agriculture provides language classes to such personnel.

(d) Conference agreed to Senate language with amendment. While not required to "develop a mechanism" for the collection of information, SBA is required to collect, analyze, and periodically update information on the share of small business exports and the nature of State exports.

The information requested apparently can be obtained through data presently collected by the Department of Commerce. The Committee has some concerns about potential obstacles SBA may encounter in referencing such data, but expects that the Department of Commerce and SBA will work cooperatively to produce this valuable information.

(e) Conference agreed to Senate language with amendment. Specific mention of both public and private conferences is retained.

(f) Conference agreed to Senate language.

(g) Conference agreed to Senate language.

The Committee recognizes that limited resources and a lack of expertise in trade remedy matters within SBA makes it impractical to require the Administration to provide trade remedy services through the Office of International Trade. The Committee believes, however, that in order for small businesses to obtain the relief that they are entitled to by law it is essential to have an independent Office of Trade Remedy Assistance that will provide small businesses with assistance. Other provisions in the Omnibus Trade Bill (title I, section 1614) create such an Office. The Committee expects SBA to work closely with that Office and to actively assist small businesses access it.

(h) Conference agreed to Senate language.

3(B). SPECIFIED REPORTS

Present law

Current law establishes an Office of Advocacy within SBA to study small business issues (15 U.S.C. 634). Current law also requires the President to report annually to Congress on small business and competition (15 U.S.C. 634).

House bill

Requires the Office of International Trade, in cooperation with other SBA offices and Federal agencies, to undertake the following studies and report to Congress with recommendations within six months from the date of enactment:

(1) the feasibility of developing a competitive export incentive program similar to the Small Business Innovation Research Program;

(2) methods of streamlining trade remedy proceedings for small businesses;

(3) methods for improving the current foreign sales corporation tax incentives for small businesses;

(4) the effects of State tax systems on the international competitiveness and export potential of small businesses;

(5) methods for ensuring greater small business representation at the GATT negotiations and the advisability of a Small Business Advisor within the Office of the USTR;

(6) the amount, dollar value, and type of goods and service imported by U.S. trading partners over the past ten years and methods for identifying potential U.S. export markets, maintaining current foreign market data, and developing an export marketing strategy for small businesses; and

(7) a survey of foreign country policies and efforts designed to encourage the formation and growth of small business.

Senate amendment

Similar requirement for studies within six months from the date of enactment.

(1) Similar provision.

(2) Similar provision.

(3), (4), (5), (6), and (7) deleted.

(8) A report on methods for streamlining export licensing procedures is added.

Conference agreement

The Conference agreed to reports (1), (2), (3), (6), and (7). Report (8) will be included under a different title of the Omnibus Trade Bill.

With regard to report (1), there has been some misunderstanding about the nature of the program to be evaluated. The program contemplated would provide funds to U.S. small businesses selected according to their plans to become involved in international trade. The funds must be matched by the firms. Additional funding would be available to those companies that successfully en-

tered overseas markets and that were willing to share their experiences with other small businesses. The program would be similar to the SBIR program only in terms of its procurement method.

To clarify report (7), it should be noted that the Committee is interested in an evaluation of all policies (i.e., domestic and foreign), of foreign countries which are designed to encourage the formation and growth of small business.

4. AUTHORIZATION OF APPROPRIATIONS. (SEC. 8004) (SEC. 3904 OF SENATE AMENDMENT)

Present law

Section 20 of the Small Business Act (15 U.S.C. 631) authorizes appropriations for SBA programs.

House bill

No similar provision.

Senate amendment

Authorizes $3,500,000 for FY 1988.

Conference agreement

The Conference agreed to Senate language with amendment. Ten percent of the authorization will be set aside for trade-related activities provided by the Service Corps of Retired Executives (SCORE). In addition, authorizations are made for both fiscal years 1988 and 1989.

The Conference Committee expects the authorized funds to be used to expand the Office of International Trade, including increasing the number of personnel, and to implement the other provisions of this title. In addition, reasonable proposals that are cost effective means for advancing the declared goals and objectives of this title should be explored and may receive funding through this authorization, including proposals directed at increasing overseas market access for U.S. small business products.

5. EXPORT FINANCING PROVIDED BY SBA. (SEC. 8005) (SEC. 1305 OF HOUSE BILL) (SEC. 3906 OF SENATE AMENDMENT)

Present law

Section 7(a)(14) of the Small Business Act (15 U.S.C. 636(a)(14)) enables SBA to provide revolving lines of credit for up to 18 months for export purposes.

House bill

Authorizes SBA to extend credit to small businesses and to small business export trading and export management companies, to develop foreign markets. Extends loan period from 18 months to up to three years. Requires that in the consideration of loan or loan guarantee applications, weight be given to firms that would generate export-related benefits.

Senate amendment

Similar provision except does not increase the credit period past the current 18-month limit.

Conference agreement

The Conference agreed to the Senate language with an amendment. Additional language is added requiring SBA to aggressively market its export financing program.

While SBA currently operates an export credit line program, it has rarely been used. Between 1983 and 1985 only one percent of SBA's loans were used for exporting, and no export loans were made in 1986. In testimony, SBA claimed the program's underutilization was due to a lack of interested firms. Overwhelming evidence suggests that, contrary to SBA's assertion, the lack of export financing available to small businesses is a critical problem and that there is no lack of interest regarding such financing. The program's underutilization appears to stem from a lack of knowledge about the program among small businesses, the banking community, and even within SBA. Recognizing the importance of export financing and SBA's apathetic attitude toward marketing such financing, the Conference Committee has decided to require statutorily that SBA aggressively market and increase the utilization of this program.

6. SMALL BUSINESS DEVELOPMENT CENTERS. (SEC. 8006) (SEC. 1306 OF HOUSE BILL)

SMALL BUSINESS EXPORT ASSISTANCE CENTERS. (SEC. 3907 OF SENATE AMENDMENT)

Present law

Section 21 of the Small Business Act (15 U.S.C. 648) creates the Small Business Development Center Program.

6(A). SERVICE DELIVERY MECHANISM.

House bill

In order to improve the access of the small business community to trade-related services and to technology transfers, additional authorizations are provided to encourage the Small Business Development Center (SBDC) network to carry out specified activities.

Senate amendment

Similar provision except that SBDCs and newly created Small Business Export Assistance Centers (other non-profit entities such as local Chambers of Commerce) would compete for the additional funding to provide specified services. A system is established for receiving, evaluating, and selecting the proposals to be funded. The matching requirements for funds are made less restrictive than under the existing SBDC program.

Conference agreement

The Conference agreed to the House language with amendment. In States where there are no SBDCs or where no application for funding is received from a SBDC within 60 days, SBA may make grants to another non-profit entity within the State to carry out the activities specified under this section. Such other entities are required to meet the same matching requirements that the SBDCs must meet.

6(B). AUTHORIZATION

House bill

Authorizes $5,000,000 for FY 1988.

Senate amendment

Authorizes $5,000,000 for FY 1988, $10,000,000 for FY 1989; and $10,000,000 for FY 1990.

Conference agreement

The Conference agreed to the House language with amendment. Authorizations are made for both fiscal years 1988 and 1989.

6(C). NEW GRANTS

House bill

(1) Allows additional grants to SBDCs to be used solely for export enhancement and technology transfer purposes.

(2) Limits grants to the SBDC's pro rata share of a $15,000,000 program or $100,000, whichever is greater.

Senate amendment

(1) Allows additional SBDC grants to be used solely for new or increased activities which enhance exports, transfer technology, and assist in information dissemination and service delivery.

(2) Limits grants at a ceiling of an applicants pro rata share of a $10,000,000 program and a floor of $50,000.

Conference agreement

(1) The Conference agreed to the House language.

It was decided that SDBCs should not be required to use funds solely for new or increased activities because some SBDCs may currently be saturating their market area with such services. It is likely, however, that the demand for such services will rise, and therefore, the Conference Committee expects the SBDCs and other funded entities to use increasing amounts of their funding for new and increased activities.

(2) The Conference agreed to the House language.

6(D). NEW SPECIFIED ACTIVITIES

House bill

(1) Expands the mandate of the SBDCs to: (a) provide management and technical assistance to small businesses for export promotion and technology transfer, and (b) act as a service delivery mechanism for international trade related programs. Encourages the establishment of a toll-free telephone number for greater access to trade-related assistance.

(2) SBDCs are to assist in technology transfer, and may:

(a) work to increases access of small businesses to automated flexible manufacturing systems;

(b) work to develop small business and academic community partnerships; and

(c) explore the viability of shared production facilities when appropriate.

(3) SBDCs are to work with the Department of Commerce and other relevant agencies to: (a) identify potential export markets; (b) facilitate export transactions; (c) develop linkages between U.S. small businesses and prescreened foreign buyers; (d) assist small businesses participate in international trade shows; and (e) assist small businesses obtain export financing and develop marketing and production strategies.

(4) SBDCs are to assist small businesses develop marketing and production strategies that will enable them to better compete in the domestic market.

(5) SBDCs are to work with the Export-Import Bank and other SBA offices to serve as a distribution network for export financing programs.

(6) No similar provision.

(7) SBDCs are to work with State agencies and other public and private groups to make translation services more readily available to small businesses.

(8) SBDCs are to (a) work closely with other SBA offices, State and local agencies and the local small business community, and (b) establish an information sharing network between each other. The latter is the responsibility of the Deputy Associate Administrator of the SBDC program.

(9) SBDCs, where appropriate, are to work with relevant State agencies to develop comprehensive export strategies within the State and explore cofunding and costaffing opportunities.

Senate amendment

(1) Similar provision but adds that an SBDC shall not establish a separate SBEAC facility if the SBDC can effectively implement the provisions of section 24 of the Small Business Act which is created in the Senate amendment. Those provisions include providing assistance to small businesses interested in international trade with emphasis on encouraging them to participate in international trade; providing technology transfers for increased productivity; and

providing assistance in marketing products abroad. Also, deletes the mention of a toll-free telephone service.

(2) SBEACs are to encourage small businesses to participate in international trade; provide technology transfers; and provide assistance in the foreign marketing of goods.

(a) No similar provision.

(b) No similar provision.

(c) No similar provision.

(3) Similar provision except (c) is deleted.

(4) No similar provision.

(5) Similar provision except the SBEACs are to act as an "information" network rather than a "distribution" network for export financing.

(6) SBEACs are to work with the Department of Commerce to increase access to available export market information systems, including CIMS.

(7) No similar provision.

(8) SBA is required to develop an information sharing system to (a) enable the SBEACs and relevant organizations to exchange information on their programs, and (b) provide information central to technology transfer. SBA must report to Congress on the implemenation of such an information sharing system.

(9) No similar provision.

(1) The Conference agrees to the Senate language with amendment. Reference to SBEACis deleted and new language is added to require SBDCs to provide information on existing trade remedy services.

The Committee believes that a major problem facing small businesses interested in exporting is limited access to federal export promotion and information programs. Consequently, Small Business Development Centers in each state are encouraged to use the funds provided under this section to establish a toll-free telephone number to provide small businesses with access to existing programs and those provided for in this title.

(2) The Conference agreed to the House language.

(3) The Conference agreed to the House language.

(4) The Conference agreed to the House language.

(5) The Conference agreed to the Senate language.

(6) The Conference agreed to the Senate language.

(7) The Conference agreed to the House language.

(8) The Conference agreed to the Senate language with amendment. The report to Congress on the implementation of the information sharing system is deleted and the reference to the Deputy Administrator of the SBDC program is retained.

(9) The Conference agreed to the House language.

The Conference believes that ongoing coordination between State international trade programs and their respective SBDC trade program could increase the effectiveness and efficiency of both efforts, and therefore, the Conference would strongly encourage such cooperation.

The Committee notes that currently SBDC funding proposals must be reviewed by a designated "point of contact" within the state to ensure that it is consistent with the state's programs. Such a requirement is published in the Federal Register along with the other funding information for the SBDC program.

7. CAPITAL FORMATION. (SEC. 8007) (SEC. 1307(A) OF HOUSE (BILL) (SEC. 3908 OF SENATE AMENDMENT)

Present law

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) provides SBA with the authority to provide loans and loan guarantees to small businesses. Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) establishes the development company loan program.

House bill

(1) Increases the ceiling on loan guarantee amounts under the 7(a) program from $500,000 to $1 million for loans made to small businesses for the purchase of plant and equipment to be used in the production of goods and services involved in international trade. SBA can guarantee such a loan if it is secured by a first lien position and the lender agrees to sell the loan in the secondary market for such loans within 180 days.

(2) SBA is required to authorize lending institutions, other than banks, to make loans to small businesses for the production of export goods.

(3) SBA is required to report to Congress within six months of the date of enactment on the viability of creating cooperative Federal-State guarantee programs.

Senate amendment

(1) Increases the limit of section 7(a) loans from $500,000 to $750,000. Also, increases the limit of section 502 loans from $500,000 to $750,000. Allows loans from both loan programs to be made to a single applicant.

(2) No similar provision.

(3) No similar provision.

Conference agreement

(1) The Conference agreed to retain the House language with amendment. Language has been added to further define what is meant by "firms engaged in international trade," and the $1 million guarantee may be combined with a guarantee of up to $250,000 for working capital under the 7(a) program. The Conference also agreed to retain the Senate language with amendment. Guarantees from the different loan programs cannot be combined.

The Committee would expect SBA to begin implementation of this program by using information already available within the Federal government to develop a list of relevant U.S. export and import-competing industries. Pertinent information may be obtained from the International Trade Commission, the International Trade Administration of the Department of Commerce, as well as other appropriate agencies. In assessing the eligibility of individual firms, the following additional criteria would then be applied:

Import Competition—The firm applying for a loan guarantee would, in effect, have to establish, *first of all*, that increased imports of articles like or directly competitive with those produced by the firm have contributed importantly by a decline in the firm's competitive position as evidenced by a decline in the firm's sales or production or both, an underutilization of capacity, a decrease in profitability, or the separation or threat of separation of a significant portion of its workers. A determination regarding the impact of imports on an applicant's business condition made by the International Trade Commission or a Trade Adjustment Assistance Center can be used to help provide the required information if appropriate. *Secondly*, the applicant would have to establish that an upgrading of plant or equipment will help improve the firm's position vis-a-vis that, or other relevant, foreign competition. The firm must demonstrate, however, that its competitive position is likely to improve sufficiently that it will be able to compete effectively against the imports.

Export Promotion—The Committee would expect that the application process would consist of a review of a detailed business plan submitted by the applicant firm, including a feasibility study, an identification of percentages of sales abroad (except for those totally new to exporting), a listing of foreign contracts, a delineation of ports of entry to be used, a survey of foreign market opportunities and prospective foreign buyers, etc.

Production Modification—Firms that are identified as exporters or as import-impacted companies may use financing under this title for the purpose of adapting existing production methods in order to produce similar or related products for which there are new or increased market opportunities. For example, if a shoe manufacturer concludes that it can never again be competitive in domestic and world markets because of foreign competition but that with modest production modifications it can produce another specialized footwear product that can be effectively marketed, then it should be encouraged to do so.

Application of Standard—The Committee would expect SBA, in implementing this program, to rely heavily on the existing program and statistical information within the Federal government, such as that contained in International Trade Commission (ITC) "economic effect studies" of particular industries and statistical abstracts and industry competitiveness studies published by the Department of Commerce, to develop more detailed regulatory standards to be used in identifying targeted industries and in assessing loan applicants. The Committee would suggest that SBA also review the program standards used by those SBDCs such as Missouri and Alabama which have developed criteria to assess the export or import-competing potential of smaller firms seeking financial assistance to enter new markets or retain old ones.

(2) The Conference agreed to the House language.

(3) The Conference agreed to the House language.

8. SMALL BUSINESS INNOVATION RESEARCH. (SEC. 8008) (SEC. 1308 OF HOUSE BILL) (SEC. 3909 OF SENATE AMENDMENT)

Present law

Section 6 of P.L. 97-219, as amended by P.L. 99-443 which requires GAO to conduct an evaluation of the SBIR Program.

House bill

Requires SBA to report to Congress within six months from the date of enactment on the advisability of amending the Small Business Innovation Research (SBIR) program to:

(a) increase each agency's share of research and development expenditures 0.25 percent per year until 3 percent is reached and targeting some portion of those funds at products with commercialization or export potential;

(b) make the program permanent;

(c) allocate a share of each agency's SBIR fund for administrative purposes;

(d) determine annually agency compliance with the program and ensure that SBIR

funding is not accompanied by parallel reductions in other small business programs; and

(e) create pooled solicitations of R&D projects of agencies with R&D budgets of $20,000,000 to $100,000,000 so that they are included under the SBIR program.

Senate amendment

(1) Similar provision.

(a) Similar provision, except uses the term "a goal of" before "3 percent".

(b) Similar provision.

(c) Similar provision.

(d) Similar provision.

(e) Deletes the concept of pooling solicitations and requires an assessment of directly including agencies with R&D budgets between $20,000,000 and $100,000,000 under the SBIR program.

Conference agreement

SBA is no longer required to undertake this study. Instead GAO is required to make recommendations on the following provisions in its report to Congress on the SBIR Program:

(a) The Conference agreed to the House language.

(b) Language retained.

(c) Language retained.

(d) Deleted. This provision was deleted because a study of the implementation of the program has already been conducted by GAO, and because it is not consistent with the other requested recommendations which focus on ways to improve the effectiveness of the program.

(e) The Conference agreed to the Senate language.

GAO is requested to undertake the study rather than SBA because GAO is currently conducting a study of the program and because GAO would be in a position to be more objective in assessing program improvements and expansions.

9. GLOBALIZATION OF PRODUCTION. (SEC. 8009) (SEC. 1309 OF HOUSE BILL)

Present law

None.

House bill

(1) Requires the SBA to submit a written report to Congress within one year from the date of enactment on:

(a) the effect of increased outsourcing and shifts in production strategies on the U.S. subcontractor tier;

(b) the impact of specific economic policies, including procurement, tax, and trade policies, that facilitate outsourcing and shifts in production arrangements; and

(c) recommendations on policy changes that would improve the competitive position of small U.S. subcontractors.

Senate amendment

No similar provisions.

Conference agreement

The Conference agreed to the House language with amendment. New language has been added relating to (a) which states that if necessary data on outsourcing is not available, SBA must report on methods by which such data may be collected.

10. SMALL BUSINESS TRADE REMEDY ASSISTANCE. (SEC. 8010) (SEC. 186 OF HOUSE BILL) (SEC. 3701 OF SENATE AMENDMENT)

Present law

Under section 339 of the Tariff Act of 1930 (19 U.S.C. 1339) as amended, a Trade Remedy Assistance Office is established within the ITC to provide full information to the public, upon request, about remedies and benefits available under any of the trade laws and the petition and application procedures and filling dates for obtaining them. Administering agencies must provide technical assistance to eligible small businesses to enable them to prepare and file the petitions and applications.

House bill

Establishes the Office as a separate office within the ITC. Adds requirements that the Office provide, to the extent feasible, (1) assistance and advice to interested parties upon request concerning remedies, benefits, and procedures under the trade laws; and (2), in coordination with the administering agencies, technical and legal assistance and advice to enable eligible small businesses to prepare and file petitions and to seek remedies and benefits under the trade laws, including any administrative reviews and appeals.

Senate amendment

Establishes an Office of Small Business Trade Remedy Assistance in the Department of Commerce, to be administered by a Director appointed by the President with the advice and consent of the Senate, to carry out the same functions transferred from the ITC Trade Remedy Assistance Office under present law.

The Director shall also establish and maintain a system for paying reasonable expenses incurred by an eligible small business in connection with any administrative proceeding under any trade law if he determines the business is in need of assistance. The Director must prepare a written evaluation of any request of expenses incurred. Payments to a business are limited to one proceeding per fiscal year and may be made only after determinations are final and cannot be appealed. Payments cannot exceed 50 percent of expenses below $200,000, or 25 percent of the amount in excess of $200,000 up to $400,000 plus 50 percent of the amount below $200,000. Authorizes annual appropriations not to exceed $3,000,000 beginning fiscal year 1989. The Director must submit an annual report on the operation of the Office to the Ways and Means and Finance Committees, including any legislative recommendations.

Conference agreement

The Conference agreed to the House language with amendment. Language is added requiring the General Accounting Office to study the costs incurred by small businesses in pursuing rights and remedies under the trade laws, and the costs and benefits to the Federal Government of providing reimbursement to small businesses for legal expenses incurred in pursuing trade remedies, or of providing direct legal assistance to small businesses. Language establishing the Office within the ITC will be included under a different title of the Omnibus Trade Bill (title I, section 1614).

11. NATIONAL SEMINAR ON SMALL BUSINESS EXPORTS. (SEC. 8011) (SEC. 1310 OF HOUSE BILL) (SEC. 3910 OF SENATE BILL)

Present law

None.

House bill

(1) Requires SBA to conduct a national conference in 1988 in order to develop recommendations designed to stimuate exports from small companies:

(a) The Speaker of the House (in consultation with the Minority Leader) and the Majority Leader in the Senate (in consultation with the Minority Leader) each appoint 15 percent of the delegates to the conference.

(b) The Conference is to bring together experts in relevant fields.

(c) The Conference is to make recommendations on the utility of an International Summit on Small Business and Trade that would:

(I) help develop a consensus on international and national policy changes that would build an international small business sector capable of long-term growth;

(II) help establish linkages between small business owners from various countries;

(III) enable U.S. small businesses learn how to organize themselves for exporting;

(IV) permit others to learn how U.S. small business operates in the U.S.;

(V) provide participants with an understanding of how international trade policy is developed; and

(VI) foster greater consideration of small business concerns in the GATT.

Senate amendment

(1) Similar provision except the conference is to be held within one year from the date of enactment.

(a) No similar provision.

(b) Similar provision.

(c) Similar provision.

(I) No similar provision.

(II) Similar provision.

(III) Changed to "learn how to identify and take advantage of exporting opportunities".

(IV) No similar provision.

(V) No similar provision.

(VI) No similar provision.

Conference agreement

The Conference agreed to the Senate language with amendment. The word "conference" has been replaced by "seminar" suggesting a smaller, more focused undertaking. In addition, discussion of an international conference is to include an evaluation of its ability to foster greater consideration of small business concerns in the GATT. (House language under objective VI.)

The Committee does not expect there to be a conference of the magnitude, nature, or expense of the White House Conference on Small Business. Currently, SBA is planning a series of regional trade conferences to encourage small businesses to export. The Department of Commerce is running a similar initiative called EXPORT NOW. The Committee expects SBA to hold a seminar that can build on the experiences and feedback of these efforts and that will develop policies and programs that go beyond "marketing" the "idea" of exporting to small businesses. Such a seminar should develop concrete recommendations for policies and programs directed at actively assisting small businesses engage in international trade.

12. TRADE NEGOTIATIONS. (SEC. 8012) (SEC. 3911 OF SENATE AMENDMENT)

Present Law

None.

House bill

No similar provisions.

Senate amendment

(1) Establishes the sense of Congress that small business has not been adequately represented in trade policy formulation and trade negotiations. Suggests that the Administrator of SBA be appointed as a member of the Trade Policy Committee and that the USTR consult with SBA in trade policy formulation and negotiations.

(2) Establishes the sense of Congress that the USTR should appoint a special trade assistant for small business.

Conference agreement

The Conference agreed to the Senate language.

13. PROMULGATION OF REGULATIONS. (SEC. 8013) (SEC. 1311 OF HOUSE BILL) (SEC. 3912 OF SENATE AMENDMENT)

House bill

Within six months from the date of enactment, SBA is required to promulgate final regulations to implement the provisions of this title.

Senate amendment

Similar provision.

Conference agreement

The Conference agreed to retain language.

14. EFFECTIVE DATE. (SEC. 8014)

House bill

October 1, 1987.

Senate amendment

No similar provision.

Conference agreement

The Conference agreed that the effective date would be the date of enactment.

TITE IX—PATENTS

SUBTITLE A—PROCESS PATENTS

1. RIGHTS OF PATENT OWNERS (SEC. 1402 OF HOUSE BILL; SEC. 3301 OF SENATE AMENDMENT)

Present Law

Title 35 grants process patent owners the right to exclude others from practicing the process in the United States.

House bill

Amends Title 35 to provide that issuance of a process patent includes the right to exclude others from using or selling in the U.S., or importing into the U.S. products made by that process.

Senate amendment

Identical provision.

Conference agreement

The conferees agreed to the House and Senate provisions.

2. INFRINGEMENT LIABILITY (SEC. 1403 OF HOUSE BILL; SEC. 3302 OF SENATE AMENDMENT)

Present law

No provision.

House bill

Provides that using, selling or importing a product made in violation of a U.S. process patent is an act of patent infringement. Limits remedies against mere users or retailers by requiring exhaustion of remedies against importers and non-retailer sellers. Libility is further limited by excluding products which have been materially changed by subsequent processes or if the product is a *minor or* nonessential component of another product.

Senate bill

Similar to House bill in that it provides that using, selling or importing a product made in violation of a U.S. process patent is an act of patent infringement. Limits remedies against mere users (for non-commercial use) or retailers by requiring exhaustion of remedies against importers and non-retailer sellers. Libability is further limited by excluding products which have been materially changed by subsequent processes or if the product is a *trivial and* nonessential component of another product.

Conference agreement

House recedes to the Senate on both "non-commercial use" and "trivial and" amendments.

As to the former, the House recession implies that exhaustion of other remedies must occur before recourse is made against a non-commercial user.

It should be noted that many of the "products" produced by patented processes are themselves "used" in the manufacture of another product which is introduced into commerce. Consider a process patent held on a method for preparing a plasmid or other vector. The use of the plasmid or vector to insert a new gene into a living cell, instructing the cell to produce an important human protein (such as insulin or interferon) which will then be separated from the fermentation mash, purified, and packaged into single dosage forms, is a commercial use and is ineligible for the limited protection granted to non-commercial uses. The field of biotechnology is particularly susceptiable to commercial "users" without sales. For example, a patent may cover a process for producing a microorganism using recombinant DNA technology. The microoganism is then used to produce a particular commercial end-product of great value. The bill's provisions limiting remedies against users are not intended to apply to such commercial uses. The Committee believes that without expeditious remedies against use-based infringement, merely stopping non-retail sale of the microorganism after its entry into the country fails to prevent commercial use of the microorganism.

In the biotechnology field it is well known that all living organisms contain within them particular genetic sequences composed of unique structural characteristics. The patented process may be for the process of preparing a DNA molecule comprising a specific genetic sequence. A foreign manufacturer uses the patented process to prepare the DNA molecule which is the product of the patented process. The foreign manufacturer inserts the DNA molecule into a plasmid or other vector and the plasmid or other vector containing the DNA molecule is, in turn, inserted into a host organism; for example, a bacterium. The plasmid-containing host organism still containing the specific genetic sequence expresses that sequence to produce the desired polypeptide. Even if a different organism was created by this biotech procedure, if it would not have been possible or commercially viable to make the different organism and product expressed therefrom but for the patented process, the product will be considered to have been made by the patented process.

As to the latter, since neither the House nor the Senate bills proposed changes to the concept of apportionment of damages, House recession to the Senate does not signify a modification of this important patent law concept.

3. LIMITATION ON DAMAGES (SEC. 1404 ON HOUSE BILL; SEC. 3303 OF SENATE AMENDMENT)

Present law

No provisions.

House bill

Limitations do not apply to those who practice the process or who knew about the infringement before the fact. No remedies against products in possession or in transmit at the time of notice. Court shall consider the good faith of the infringer and the rights of the patent owner. The notice that triggers infringement liability consists of: (1) actual knowledge; or (2) notice of a *substantial likelihood* that the product was made by an infringing process. If a party has an excessive inventory actual notice or knowledge is rebuttably presumed.

Senate amendment

Same limitations as House bill in that limitations do not apply to those who practice the process or who knew about the infringement before the fact. No remedies against products in possession or in transit at the time of notice, except exemption also applies to goods for which a binding commitment to purchase has been made and such goods have been at least partially manufactured at the time of notice. Burden of proof is on the party seeking exemption. Same as House bill in that court shall consider the good faith of the infringer and the rights of the patent owner, except court shall also consider the patent owner's compliance with the request for disclosure procedure. As relates to request for disclosure, patent owners may be asked by importer to identify all process patents owned or licensed by that person which could be reasonably asserted as grounds for infringement. Patent owners must respond within 60 days. The requester for such information must agree to pass it along to the manufacturer or supplier with a request for a written statement that such protected processes are not used. Failure by either party to meet these obligations to be considered as a point in the determination of *good* faith. Notice of infringement is actual knowledge or written notification or combination thereof of information *sufficient to persuade a reasonable person it is likely* that a product was made by an infringing process. Receipt of the written notification absent mitigating circumstances, is deemed notice of infringement if the manufacturer/supplier is not contacted.

Conference agreement

The House and Senate compromised between the two bills.

First, the conferees adopted language that has the effect of deleting from the Senate amendment an exemption for goods for which a "party has made a binding commitment to purchase and which has been partially or wholly manufactured." This agreement resolves the primary objection raised by the Administration, thereby removing any arguments about the existence of a compulsory license. Also deleted is the last sentence of the Senate amendment in section 287(b)(2) relating to allocation of damages. The conferees adopted the formulation in the Senate amendment in section 287(b)(3)(A) and (B) with an amendment. The conferees deleted the 60 day deadline for replying to a request for disclosure and adopted a "reasonable time" limit. It is expected that a reasonable time for response to a request for disclosure shall ordinarily be no more than 60 days. In the event of mitigating circumstances, the burden to show why 60 days is not sufficient lies with the party failing to comply.

Second, the conferees also adopted the Senate amendment with respect to section 287(b)(4) with two amendments. In the event of a request for disclosure that is made to a person with a patent license (exclusive or non-exclusive) the recipient of such a request has the choice of either a direct response or passing the request for disclosure on to the licensor. Further, the conferees provided an exemption from the request for disclosure provisions. A person who has marked the number of the patent covering the process used to make the product that the person sells in the United States is not required to respond to a request for disclosure. The Conferees recognize that products may already be in the

stream of commerce or about to be manufactured at the time of enactment. Thus, a transition period is provided to allow for an exhaustion of packaging inventory. The marking requirement is derived from existing section 287 of title 35, United States Code. When referring to the option of marking products to avoid a response to a request for disclosure, the conferees contemplate that the marking appear on the immediate packaging of the product or if marking the package is not feasible on the product itself produced by the process patent.

Third, the government adopted language which requires that a person who has received a response to a request for disclosure shall pay to the party to whom the request is made a reasonable fee to cover the actual costs of complying with the request. The reimbursement of reasonable costs shall occur after the response, thereby not delaying in any way the request for disclosure. These reasonable costs shall be subject to three caps: first, the actual cost of any activity undertaken to comply with the request is the first limit and reasonable costs may not in any event exceed this actual cost; second, the reimbursement may not exceed the cost of a commercially available automated patent search of the matter involved; and third, in no event may reasonable costs exceed $500, a formal patent search not being required. Finally, a request for disclosure for purposes of this provision applies separately to each product. For example, a request for disclosure on two products triggers two separate reimbursements.

Fourth, the House recedes to the Senate on the question of notice with an amendment. Deleted from the Senate amendment is the explicit requirement that, as a part of the notification process, the patent owner set forth such persons actual knowledge of any commercially feasible process other than the patented process which is capable of producing the allegedly infringing product. However, the conferees expect that some patent owners will find it necessary to discuss other processes to meet the requirements of providing "such information . . . as is reasonably necessary to fairly explain [their] belief," that an infringing process was used. The factual basis for the belief that an infringing process has been used can also be shown by an indication that the protected process contains certain impurities that do not exist with respect to other alternative processes. Similarly, gross price disparities between the cost associated with use of the protected process and all others may be sufficient to meet this test.

Last, the House recedes to the Senate with respect to section 287(b)(5)(C) with an amendment and explanatory language. The term "mitigating circumstances" is meant to encompass the death or incapacity of the person who was intended to make the submission or an inability to locate the manufacturer/supplier due to his no longer being in business, or inability of the manufacturer to respond to the submission because such manufacturer has gone out of business. A person who receives a written notification described in subparagraph (B) or a written response to a request for disclosure described in paragraph (4) shall be deemed to have notice of infringement with respect to any patent referred to in such written notification or response unless that person, absent mitigating circumstances: first, promptly transmits the written notification or response to the manufacturer or, if the manufacturer is not known, to the supplier, of the product purchased or to be purchased by that person; and second, receives a written statement from the manufacturer or supplier which on its face sets forth a well grounded factual basis for a belief that the identified patents are not infringed. The term "on its face" refers to the four corners of the written statement received by the person making the request for disclosure.

4. PRESUMPTION OF INFRINGEMENT (SEC. 1405 OF HOUSE BILL; SEC. 3304 OF SENATE AMENDMENT)

Present law

No provisions.

House bill

If the court finds there is a substantial likelihood that the product was made in violation of the process patent *and* the claimant has made a reasonable effort to determine the process used, then there is a rebuttable presumption that the product has been made in violation of the process patent.

Senate amendment

Same, except for minor drafting problems.

Conference agreement

Senate recedes to the House.

5. EFFECTIVE DATE (SEC. 1406 OF HOUSE BILL; SEC. 3305 OF SENATE AMENDMENT)

Present law

No provisions.

House bill

Generally applies only to products made or imported after the date of enactment. *Exception* for persons in business using, selling or importing goods already in production on January 1, 1987. Other remedies not affected.

Senate amendment

Similar to House bill in that it generally applies only to products made or imported after the date of enactment, except for persons in businesses using, selling or importing goods already in production on May 15, 1987, and *exception* does not apply to parties with certain cases brought previously before the International Trade Commission.

Conference agreement

The House basically recedes to the Senate. However, the conferees agreed to insert "January 1, 1988" in lieu of "May 15, 1987". The conferees also agreed that the Act will become effective six months after the date of enactment.

6. REPORTS TO CONGRESS (SEC. 1407 OF HOUSE BILL; SEC. 3306 OF SENATE AMENDMENT)

Present law

No provisions.

House bill

Reports on effect of legislation to be submitted by Secretary of Commerce.

Senate amendment

Identical provision.

Conference agreement

The conferees agreed to the House and Senate provisions, with one minor amendment to clarify the scope of the Secretary's report.

7. INFRINGEMENT OF PATENTS (SEC. 3401 OF SENATE AMENDMENT)

Present law

Patent misuse is a common law doctrine that has its roots in the equitable doctrine of unclean hands. Section 271 of Title 35, U.S. Code, provides that certain narrowly described activities of a patent owner shall not be considered patent misuse. Although some misuses of patents may constitute antitrust violations, others do not.

House bill

No provision.

Senate amendment

Amends Title 35 to provide that a patent owner's licensing practices will not constitute patent misuse unless they violate the antitrust laws.

Conference agreement

The Senate recedes to the House.

8. LICENSEE CHALLENGES (SEC. 3501 OF SENATE AMENDMENT)

Present law

Title 35 does not cover the rights of licensees and licensors in a patent license agreement where the validity of the patent is challenged in litigation. However, in 1969, the U.S. Supreme Court ruled in *Lear* v. *Adkins* that a licensee can challenge the validity of a patent, without giving up the benefits of the license during the challenge.

House bill

No provision.

Senate amendment

Amends Title 35 to provide that a licensee may challenge the validity of the licensed patent irrespective of an agreement between the parties barring such challenge. Also provides that the parties to a licensing contract may define their respective rights regarding the termination of a license and payment of royalties if the validity of the licensed patent is challenged.

Conference agreement

The Senate recedes to the House. The conferees came close to solving the issues and resolve to work positively towards enactment of legislation in the near future.

SUBTITLE B—FOREIGN FILING

9. INCREASED EFFECTIVENESS OF PATENT LAW (SEC. 3602 OF SENATE AMENDMENT)

Present law

Section 184 of title 35, United States Code, provides that one who files for a patent must wait six months before filing for a patent in any foreign country. The waiting period permits the Patent and Trademark office to determine whether the application contains information important to the national security. An inventor may procure a license that permits earlier foreign filing, and may be granted a retroactive license if he "inadvertently" filed and did not compromise national security. Courts have interpreted "inadvertently" narrowly. An implementing regulation was interpreted to mean that no foreign application may contain *any* information that was not in the U.S. application. One needs a license before providing any additional information whatsoever. An inventor can lose U.S. patent protection if he provides additional information without a license or files an untimely application.

House bill

No provisions. In the 98th Congress, the House passed a measure substantially the same as the Senate bill.

Senate amendment

The Senate amendment strikes "inadvertently" to extend a retroactive license if one is untimely "through error and without deceptive intent," a well-established patent principle. One will not receive a retroactive license if he disclosed national security information. The Senate amendment further permits an applicant to file "modifications,

amendments and supplements containing additional subject matter," with a foreign patent office without procuring a special license. One could not provide such additional subject matter if it changed the nature of the invention or disclosed national security information.

Conference agreement

The House recedes to the Senate.

SUBTITLE C—PATENT TERM EXTENSION

10. PHARMACEUTICAL PATENT EXTENSION (SEC. 3601 OF SENATE AMENDMENT)

Present law

No provision.

House bill

No provision.

Senate amendment

Amends Title 35 to extend the patent on the pharmaceutical product gemfibrozil ("Lopid") for a period of five years, assuming that certain conditions are met.

Conference agreement

The conferees agreed that the patent for the drug product Lopid (gemfibrozil) should be extended for three and one-half years in the form of a private patent bill assuming that certain statutory conditions are met.

Specifically, section 1, subsection (a) of the agreement extends the patent on gemfibrozil for a period of three and one-half years from its date of expiration according to specific conditions set forth in subsection (b).

This patent extension responds to unique circumstances surrounding the regulatory testing and approval of Lopid.

Section 2 describes the procedure which must be followed by the patent holder and the Commissioner of Patents and Trademarks in executing the extension.

TITLE X—OCEAN AND AIR TRANSPORTATION

SUBTITLE A—FOREIGN SHIPPING PRACTICES

I. SHORT TITLE

The *House* bill (Sec. 1101) does not amend any existing maritime laws. It is free standing.

The *Senate* amendment (Sec. 4601) amends the Shipping Act of 1984 by adding a new section 23.

The *Conference* agreement (Sec. 10001) adopts the Senate title, but leaves the measure free standing.

II. DEFINITIONS

The *House* bill (Sec. 1102) defines "class of goods", "Commission", "conference", "documented vessel", "goods", and to "vessel of a foreign country".

The *Senate* amendment (Sec. 4602(a)) defines "foreign carrier", "maritime services", "maritime-related services", "United States carrier", and United States oceanborne trade".

The *Conference* agreement (Sec. 10002(a)) adopts the Senate definitions with two changes. First, the managers modified the definition of a foreign carrier. The original Senate amendment defined a foreign carrier as one whose vessels are all documented under the laws of a foreign country. The version adopted by the Conference states that only a majority of the vessels need fly a foreign flag for a carrier to be considered a foreign carrier. The purpose of this change is to preclude the possibility of a foreign carrier avoiding coverage under the Act by merely documenting a single vessel under the laws of the United States.

The phrase "whether direct or indirect" is included in the definition of the term "United States oceanborne trade" to make clear that the term includes "maritime-related services."

The House managers, while receding to the Senate on the matter of non-liner coverage under the bill, remain concerned that some practices by foreign governments and persons that involve the utilization of non-liner vessels may have an adverse effect on United States vessels of all types.

III. INVESTIGATIONS

The *House* bill (Sec. 1103) requires an investigation by the FMC on a complaint by an operator or employee of a U.S. vessel, or when at least 25 percent of a class of goods are carried by a foreign carrier between the U.S. and that foreign country. It allows the FMC to initiate an investigation on its own motion, and also provides for a preliminary review, which must proceed to an adjudicatory proceeding if the FMC reasonably believes an unfair practice would be found. An unfair practice shall be found when the acts, policies, or practices of a foreign nation unreasonably impair U.S. vessel access to cargo, taking into account the market share of U.S. vessels, whether restraint of trade or the denial of fair and equitable market opportunities, or the denial of internationallly recognized seafarer's rights exists. A foreign entity must show an unfair practice does not exist in certain cases.

The *Senate* amendment (Sec. 4602(b)-(d)) requires the FMC to investigate whether any foreign laws or practices create conditions for U.S. common carriers in the U.S. oceanborne trade that do not exist for foreign carriers under laws or practices in the United States. Investigations may be initiated on the FMC's own initiative or on the petition of any person. The FMC is given specific authority to require reports or other information. Investigations must be completed in 120 days, plus an additional 90 days if the FMC is unable to obtain sufficient information.

The *Conference* agreement (Sec. 10002(b)-(d) adopts the Senate language with an additional phrase, "adversely affect". The purpose of this addition is to make it clear that the managers intend that no action be taken in cases where U.S. carriers have not been harmed, even if the foreign country has laws, rules, regulations, policies, or practices, or foreign carriers or other persons have practices that differ from those of the United States.

This two-fold requirement is based on the manager's view that U.S. maritime law ensures that on the U.S. side, our liner trades are equally accessible to all vessels wishing to enter them. On the other hand, some of our trading partners do not reciprocate this standard of openness. Where this is the case, the managers believe it reasonable to use U.S. maritime regulatory laws and the practices they guarantee as touchstones to promote free and fair trade for U.S. liner operators. The legislation therefore authorizes the agency where necessary to take steps designed to "level the playing field."

The FMC has broad discretion to dismiss frivolous or harassing complaints. While the FMC has discretion to investigate certain conduct by foreign governments or persons, the managers intend that legitimate petitions alleging facts and arguing law, which if supported, would establish actionable conditions under subsection (b) not be summarily rejected. For this reason, the managers added to the subsection (g) report a requirement that the Commission list all rejected petitions and the reasons for the rejection.

The requirement to render a decision as well as complete an investigation within 120 days (extendable to 210 days) is imposed not only to expedite the process, but also to allow the Commission to conclude action, including a determination, even where a party refuses to provide information requested under subsection (d).

The managers intend that the authority granted to the Commission to withhold information from the public under subsection (d)(3) extends only to information used in the administration of this Act, and do not intend that this authority be available to the Commission for other matters.

IV. NEGOTIATIONS

The *House* bill (Sec. 1104) requires the removal of an unfair practice or a reduction of cargo carriage by the foreign vessel(s) equal to the benefit derived from the unfair practice.

The *Senate* amendment has no similar provision.

The *Conference* agreement contains no provision on negotiations.

V. ACTIONS AGAINST FOREIGN CARRIERS AND PENALTIES

The *House* bill (Sec. 1105) provides a civil penalty or identical limitations on foreign vessel operations if negotiations are not completed.

The *Senate* amendment (Sec. 4602(e), (f)) provides that, upon a finding of the conditions specified, the FMC shall take whatever action it deems appropriate against any foreign carrier that contributes to, or whose government contributes to, those conditions. These actions may include limitation of sailings, and suspension of tariffs or other rights. The FMC may consult with, or make recommendations to, other government agencies prior to taking action. The President may disapprove an FMC order for national defense or foreign policy reasons. Upon request of the FMC, offending foreign vessels shall be denied clearance by the collector of customs or be denied entry to U.S. ports by the Coast Guard.

The *Conference* agreement (Sec. 10002(e), (f)) adds language to the Senate provision. The added language gives the Commission discretion to hold a hearing instead of basing its record on comments. The managers intend that the FMC afford the opportunity for hearing or comment as due process considerations require. While some form of hearing may be an appropriate procedure in some cases, the legislation does not require a hearing on the record.

Language from the House bill authorizing the FMC to levy a monetary amount has been added (subsection (e)(1)(D)). It is intended that "agreements filed with the Commission" include contracts otherwise required to be filed with the FMC (subsection (e)(1)(C)).

The FMC is authorized to act against a carrier or the vessels of a carrier that is owned or controlled by citizens of the contributory government, regardless of whether the carrier's vessels are documented under the laws of the contributory government.

Language from the House bill is added to subsection (e)(3) to require that if the President disapproves an FMC action, the reasons for the disapproval must be set forth in writing.

Language was added in subsection (f)(2) to clarify that it is for the purposes of oceanborne trade that vessels may be denied entry. Entry for repairs and other rights under international law are not affected.

Language was added (Sec. 4602(i)) which provides that final orders of the Commission are, as a general proposition, reviewable by the Court of Appeals, not by the District Court. It is not intended to be used where, in the general conduct of a proceeding, the Commission seeks to enforce a subpoena or obtain enforcement of other discovery or information requests. As is the practice under section 14(c) of the Shipping Act of 1984, these orders would be reviewable in the District Court.

VI. REPORT

The *House* bill does not contain a separate reporting requirement provision.

The *Senate* bill (Sec. 4602(g)) requires the FMC include in its annual report to Congress a list of the 20 foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the United States; an analysis of conditions being investigated or existing in foreign countries; actions being taken by the FMC; and recommendations for legislation.

The *Conference* agreement adopts the Senate reporting requirement. A new provision was added, requiring the FMC to include a list of petitions filed under subsection (c) that the FMC rejected, and the reasons for the objections. Further, the FMC must report conditions being investigated or found to exist in foreign countries.

VII. AUTHORIZATION

The *House* bill (Sec. 1106) authorizes $5 million for implementation, offset by penalty receipts.

The *Senate* amendment provides no additional funds for the FMC to implement this system.

The *Conference* agreement provides no authorization.

VIII. MOBILE TRADE FAIRS

The *House* bill (Sec. 1110) reauthorizes sec. 212(B)(c) of the Merchant Marine Act, 1936 at $500,000 per year for six years.

The *Senate* amendment has no similar provision.

The *Conference* agreement (Sec. 10003) adopts language that is intended to reestablish the authority of the Department of Commerce to provide assistance to mobile trade fair projects without requiring a specific or new authorization or appropriation. The managers intend that by simply eliminating the specific authorization language, including the sunset provision, that the Department of Commerce will retain programmatic authority, within current budgetary constraints, to support mobile trade fairs whenever appropriate as an additional tool to encourage and promote U.S. exports. The managers intend that this program include support for the operation of an exhibition ship that is acting as an at sea international management export company representing the manufacturers of American-made products. The managers also intend that no special appropriation is necessary, but that appropriations generally for trade promotion purposes could be used for carrying out this section. The authority is left with the Department of Commerce as the appropriate agency to oversee trade promotion activities within the government. However, the managers recognize that U.S.-flag carriers are the only recipients of support under this provision that may, as appropriate, involve the interest of Department of Transportation agencies. The authority of the President to use foreign currencies is retained for flexibility. This provision has been revised, however, to insure that this is a discretionary authority.

Section 10003(b) is intended to allow refurbishment, including painting, of a vessel intended for use solely for mobile trade fair purposes without the requirement for inspection as a commercial vessel until the vessel is placed in service as a mobile trade fair vessel. This does not exempt the vessel from meeting the requirements of documentation as a vessel of the United States, but is intended as an interim measure to encourage the conversion of U.S.-flag vessels [as quickly as possible] without unnecessary delays. For this reason, this subsection has been limited to a one-year duration to encourage projects to act as promptly as possible. This provision is limited to applications under section 3302(e) only, and the ultimate burden of showing that the vessel is undergoing refurbishment rests with the owner. The managers urge the Department of Transportation and the Coast Guard to cooperate to the maximum extent possible with these projects, consistent with their responsibilities for safety of life and property at sea.

1. Present law

Establishes a deadline of 180 days for the Secretary of Transportation to take action on a complaint by a U.S. air carrier against a foreign government or foreign air carrier that is engaging in discriminatory practices against a U.S. air carrier or imposing unreasonable restrictions on access of a U.S. air carrier to foreign markets.

House bill

Establishes a new deadline of 90 days for the Secretary of Transportation to take action on a complaint.

Senate amendment

Identical to House bill.

Conference agreement

House bill.

2. Present law

Does not provide for an extension of the 180-day deadline for the Secretary of Transportation to take action on a complaint.

House bill

Provides that the 90-day deadline established by the House Bill can be extended up to another 90 days if:

(1) It appears negotiations will produce an imminent, satisfactory resolution;

(2) No U.S. air carrier has been subjected to economic injury, and

(3) The public interest requires additional time before taking action.

Senate amendment

Identical to House bill.

Conference agreement

House bill.

3. Present law

Requires the Secretary of Transportation to solicit the views of the Department of State before taking action on a complaint.

House bill

Requires the Secretary of Transportation to solicit the views of the Department of Commerce and the United States Trade Representative in addition to the Department of State before taking action on a complaint.

Senate amendment

Identical to House bill.

Conference agreement

House bill.

4. Present law

Does not require reports to Congressional Committees on actions taken on a complaint.

House bill

Requires the Secretary of Transportation to report within 30 days of taking action on a complaint to the House Committee on Public Works and Transportation and the Senate Committee on Commerce, Science and Transportation on what actions have been taken.

Senate amendment

Requires the same reports as the House bill, except that the Secretary does not have to report if the complaint is withdrawn before the 30th day.

Conference agreement

House bill.

From the Committee on Ways and Means, for consideration of titles I, II, VIII, and XV and sections 704 and 906 of the House bill, and titles I, II, III (except sections 308 and 310), IV (except sections 412 through 415), V through VIII, IX (except sections 963, 967 through 972, 974, 975, and 977) of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
THOMAS J. DOWNEY,
DON J. PEASE,
MARTY RUSSO,
FRANK GUARINI,
ROBERT T. MATSUI,
JOHN J. DUNCAN,
BILL ARCHER,
GUY VANDER JAGT,

From the Committee on Ways and Means, for consideration of sections 321, 323, 363, 907 through 909 of the House bill, and title XXXVII and sections 308, 310, 412, 977, 2002, and 3871 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
THOMAS J. DOWNEY,
DON J. PEASE,
MARTY RUSSO,
RICHARD T. SCHULZE,

From the Committee on Ways and Means, for consideration of sections 613, 626, 627, 671 through 675, 681, 682, 691, and 692 of the House bill, and sections 974, 975, 2112, 2128, 2171, 2173 through 2175, 2191, 2193, and 2194 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
DON J. PEASE,
MARTY RUSSO,
ROBERT T. MATSUI,
WM. THOMAS,

From the Committee on Ways and Means, for consideration of sections 605 through 607, 611, and 663 of the House bill, and sections 2113, 2114, and 2136 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
ROBERT T. MATSUI,
WM. THOMAS,

From the Committee on Ways and Means, for consideration of title X of the House bill, and section 3911 of the Senate amendment, and modifications committed to conference:

SAM M GIBBONS,
FRANK GUARINI,

From the Committee on Ways and Means, for consideration of sections 351, 901, and

902 of the House bill, and sections 968 through 972, 1030 through 1033, and 3811 through 3824 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
THOMAS J. DOWNEY,
BILL ARCHER,
RICHARD T. SCHULZE,

From the Committee on Agriculture, for consideration of title VI and sections 318 through 321 of the House bill, and title XXI (except sections 2178 through 2180A and 2185 through 2187) and sections 601, 602, 604, 605, 974, 975, and 4706 of the Senate amendment, and modifications committed to conference:

K. DE LA GARZA,
GEORGE E. BROWN, Jr.,
LEON E. PANETTA,
DAN GLICKMAN,
CHARLIE STENHOLM,
HAROLD L. VOLKMER,
PAT ROBERTS,
SID MORRISON,
STEVE GUNDERSON,
FRED GRANDY,

From the Committee on Agriculture, for consideration of section 308 of the Senate amendment, and modifications committed to conference:

K. DE LA GARZA,
GEORGE E. BROWN, Jr.,
DAN GLICKMAN,
PAT ROBERTS,
SID MORRISON,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 126 (insofar as it would add new sections 311(g) (1) and (2) to the Trade Act of 1974), sections 401 through 427, and 431 through 452 of the House bill, and titles XIII and XVII and sections 108, 2008, 2012, and 2178 through 2180A of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
JOHN J. LAFALCE
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 322 of the House bill, and section 1106 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
ROBERT GARICA,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 341 and 344 of the House bill, and modifications committed to conference:

WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
JOHN J. LAFALCE,
CHARLES E. SCHUMER,
BRUCE A. MORRISON
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 428 of the House bill, and section 1506 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE VENTO,
DOUG BARNARD, Jr.,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 461 through 471 of the House bill, and sections 3801 through 3809 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE F. VENTO,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 476 and 477 of the House bill, and sections 1101 through 1103 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
JOHN J. LAFALCE
BRUCE VENTO,
DOUG BEREUTER,
TOBY ROTH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 907 of the House bill, modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
BRUCE VENTO,
CHARLES E. SCHUMER,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 911 of the House bill, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 959 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,
ROBERT GARCIA,
CHARLES E. SCHUMER,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 1026 and 1027 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,
TOBY ROTH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 1501 through 1504 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE VENTO,
DOUG BARNARD, Jr.,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1805 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
BRUCE VENTO,
CHARLES E. SCHUMER,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title XIX and section 2001 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
JOHN J. LAFALCE,
BRUCE VENTO,
CHARLES E. SCHUMER,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 313 of the House bill, and sections 1201 and 1203 of the Senate amendment, and modifications committed to conference:

WALTER E. FAUNTROY,
ROBERT GARCIA,
BRUCE A. MORRISON,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 326 of the House bill, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
ROBERT GARCIA,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 345 of the House bill, and modifications committed to conference:

MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 664 of the House bill, and sections 1801, 3903, and 3906 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
ROBERT GARCIA,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 702 of the House bill, and modifications committed to conference:

FERNAND J. ST GERMAIN,
WALTER E. FAUNTROY,
MARY ROSE OAKAR,

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 902, 905, and 912 of the House bill, and title XIV and sections 3811 through 3824, 3861 through 3867, and 4501 of the Senate amendment, and modifications committed to conference:

MARY ROSE OAKAR,
JOHN J. LAFALCE,
BRUCE VENTO,
J. ALEX MCMILLAN,
TOBY ROTH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1303 of the House bill, and modifications committed to conference:

MARY ROSE OAKAR,
WALTER E. FAUNTROY,

ROBERT GARCIA,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1105 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
ROBERT GARCIA,
DOUG BEREUTER,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1505 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE F. VENTO,

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 3854 of the Senate amendment, and modifications committed to conference:

FERNAND J. ST GERMAIN,
MARY ROSE OAKAR,
BRUCE F. VENTO,

From the Committee on Foreign Affairs, for consideration of title III (except sections 322, 326, and 351) and sections 451, 601 through 612, 621 through 623, 625, 631 through 637, 641 through 651, 653, 663, 701, 903, 907, and 912 of the House bill, and titles X (except sections 1030 through 1033), XII, XVI, XVIII (except section 1801), XX (except sections 2001 and 2008), and XLVII and sections 311, 413 through 415, 958, 963 through 972, 977, 1104, 1304, 1504, 2111, 2113 through 2127, 2129, 2132 through 2136, 2138, 2139A through 2166, 2180B through 2182, 2184, 2192, 3851, 3871, 4501, and 4901 of the Senate amendment, and modifications committed to conference:

DANTE B. FASCELL,
DON BONKER,
DAN MICA,
HOWARD L. BERMAN
(except for section 331 of the House bill, and section 1020 of the Senate amendment),
MEL LEVINE
(except for sections 301 through 321, 323 through 325, 345, 601 through 612, 621 through 623, 625, 631 through 637, 641 through 651, 653, 663, and 912 of the House bill, and sections 311, 958, 968 through 972, 1802 through 1805, 1807 through 1809, 2002 through 2007, 2009 through 2012, 2111, 2113 through 2127, 2129, 2132 through 2136, 2138, 2139A through 2166, 2180B through 2182, 2192, 4501, and 4901, and titles XII and XLVII of the Senate amendment),
JAMES H. BILBRAY
(except for section 331 of the House bill, and section 1020 of the Senate amendment),
TOBY ROTH,
DOUGLAS BEREUTER,
JOHN MILLER
(except for section 331 of the House bill, and section 1020 and title XLVII of the Senate amendment),

From the Committee on Foreign Affairs, for consideration of section 331 of the House bill, and section 1020 of the Senate amendment:

HOWARD WOLPE,

From the Committee on Foreign Affairs, for consideration of section 325 of the House bill, and title XLVII and sections 311, 958, 968 through 972, 2002 through 2007, 2009 through 2012, and 4901 of the Senate amendment:

STEPHEN J. SOLARZ,

From the Committee on Foreign Affairs, for consideration of sections 318 through 321, 345, 601 through 612, 621 through 623, 625, 631 through 637, 641 through 651, 653, 663, and 912 of the House bill, and sections 2111, 2113 through 2127, 2129, 2132 through 2136, 2138, 2139A through 2166, 2180B through 2182, 2192, and 4501 of the Senate amendment:

SAM GEJDENSON,

From the Committee on Foreign Affairs, for consideration of title XLVII of the Senate amendment:

BENJAMIN A. GILMAN,

From the Committee on Foreign Affairs, for consideration of sections 322, 326, 351, 461 through 471, 664, 702, 703, 901, 902, 905, 1303 through 1306, and 1310 of the House bill, and title XIV and sections 308, 412, 1105, 1505, 1801, 3801 through 3824, 3854, 3902 through 3907, 3910, and 3912 of the Senate amendment, and modifications committed to conference:

DON BONKER,
DAN MICA
(except for sections 1303 through 1306 and 1310 of the House bill, and sections 3902 through 3907, 3910, and 3912 of the Senate amendment),
HOWARD L. BERMAN
(except for section 664 of the House bill, and sections 308 and 2178 through 2180A of the Senate amendment),
DOUG BEREUTER
(except for sections 1303 through 1306 and 1310 of the House bill, and sections 3902 through 3907, 3910, and 3912 of the Senate amendment),

From the Committee on Foreign Affairs, for consideration of section 664 of the House bill, and sections 308 and 2178 through 2180A of the Senate amendment:

SAM GEJDENSON,

From the Committee on Foreign Affairs, for consideration of sections 1303 through 1306 and 1310 of the House bill, and sections 3902 through 3907, 3910, and 3912 of the Senate amendment:

JAMES H. BILBRAY,
BILL BROOMFIELD,

From the Committee on Foreign Affairs, for consideration of sections 1030 through 1033 of the Senate amendment, and modifications committed to conference:

DANTE B. FASCELL,
DON BONKER,
DAN MICA,
WM. BROOMFIELD,
TOBY ROTH,

From the Committee on Energy and Commerce, for consideration of title II and section 703 of the House bill, and sections 901 through 913 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
MIKE SYNAR,
D.E. ECKART,
JIM SLATTERY,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
MATT RINALDO,
DON RITTER,

From the Committee on Energy and Commerce, for consideration of sections 104, 181, 183, 324, 701, 903, 904, 906, and 909 of the House bill, and title XVI and sections 1503, 1802, and 3851 through 3853 of the Senate amendment, and modifications committed to conference; for consideration of sections 121 and 124 of the House bill, and sections 306 and 307 of the Senate amendment, and modifications committed to conference, except for those matters relating to suspension, withdrawal, or prevention of trade agreement concessions or to imposition of duties or other import restrictions on goods; and for consideration of section 201 of the Senate amendment (insofar as it would add new sections 204(d)(1)(B)(ii) and 204(d)(2)(B) through (E) to the Trade Act of 1974), and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
JOHN BRYANT,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
MATT RINALDO,

From the Committee on Energy and Commerce, for the consideration of section 198 of the House bill, and sections 2185 through 2188 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
JOHN BRYANT,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
DAN COATS,

From the Committee on Energy and Commerce, for the consideration of sections 908, 910, and 911 of the House bill, and section 310 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
PHILIP R. SHARP,
AL SWIFT,
JOHN BRYANT,
NORMAN F. LENT,
MATT RINALDO,
DON RITTER,

From the Committee on Energy and Commerce, for consideration of sections 311 through 316, 345, 461 through 471, 901, 902, 905, 907, and 912 of the House bill, and titles

XII (except section 1207) and XIV and sections 968 through 972, 1801, 1802, 3801 through 3824, and 4501 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
NORMAN F. LENT,
(except for sections 461-471 of the House bill and sections 3801-3809 of the Senate amendment),

From the Committee on Energy and Commerce, for consideration of section 331 of the House bill, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
NORMAN F. LENT,

From the Committee on Energy and Commerce, for consideration of section 702 of the House bill, and sections 1505 and 3854 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
NORMAN F. LENT,
MATT RINALDO,

From the Committee on Energy and Commerce, for consideration of sections 3861 through 3867 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
JAMES J. FLORIO,
EDWARD J. MARKEY,
NORMAN F. LENT,
DON RITTER,

From the Committee on Education and Labor, for consideration of title V (except subtitle B) of the House bill, and titles XXIII through XXXII of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
DALE E. KILDEE,
PAT WILLIAMS,
JIM JEFFORDS,
BILL GOODLING,
TOM COLEMAN,

From the Committee on Education and Labor, for consideration of subtitle B of title V of the House bill, and title XXII of the Senate amendment (except the portion of section 2202 that would add new part B to title III of the Job Training Partnership Act), and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
W.L. CLAY,
MATTHEW G. MARTINEZ,
JIM JEFFORDS,
MARGE ROUKEMA,
STEVE GUNDERSON,

From the Committee on Education and Labor, for consideration of section 2202 of the Senate amendment (insofar as it would add new part B to title III of the Job Training Partnership Act), and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
W.L. CLAY,
MATTHEW G. MARTINEZ,
AUSTIN J. MURPHY,
JIM JEFFORDS,

From the Committee on Education and Labor, for consideration of section 904 of the House bill, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
JIM JEFFORDS,
BILL GOODLING,

From the Committee on the Judiciary, for consideration of title XIV and sections 166, and 171 through 173 of the House bill, and titles XXXIII through XXXVI and sections 201 (insofar as it would add new section 203(f) to the Trade Act of 1974), 401, 415, 416, 1107, 1806, 1908, and 1910 of the Senate amendment, and modifications committed to conference:

PETER W. RODINO, Jr.,
BOB KASTENMEIER,
DON EDWARDS,
WILLIAM J. HUGHES,
PAT SCHROEDER,
GEO. W. CROCKETT, Jr.,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,
HENRY J. HYDE,
DANIEL E. LUNGREN,

From the Committee on the Judiciary, for consideration of sections 872 and 873 of the House bill, and modifications committed to conference:

PETER W. RODINO, Jr.,
BOB KASTENMEIER,
DON EDWARDS,
WILLIAM J. HUGHES,
PAT SCHROEDER,
GEO. W. CROCKETT, Jr.,
BILL MCCOLLUM,
DANIEL E. LUNGREN,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on the Judiciary, for consideration of sections 326, 905, and 912 of the House bill, and titles XIV and XLVIII, and sections 1105 and 3861 through 3867 of the Senate amendment, and modifications committed to conference:

PETER W. RODINO, Jr.,
DON EDWARDS,
WILLIAM J. HUGHES,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on the Judiciary, for consideration of section 351 of the House bill, and modifications committed to conference:

BOB KASTENMEIER,
PAT SCHROEDER,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on the Judiciary, for consideration of section 701 of the House bill, and sections 1603 through 1605 of the Senate amendment, and modifications committed to conference:

PETER W. RODINO, Jr.,
WILLIAM J. HUGHES,
GEO. W. CROCKETT, Jr.,
BILL MCCOLLUM,

From the Committee on the Judiciary, for consideration of section 703(h) of the House bill, and modifications committed to conference:

PETER W. RODINO, Jr.,
WILLIAM J. HUGHES,
GEO. W. CROCKETT, Jr.,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,

From the Committee on Government Operations, for consideration of titles X and XVI of the House bill, and title XLVIII of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS, Jr.,
STEVE NEAL,
BARRY FRANK,
BOB WISE,
FRANK HORTON,
ROBERT WALKER
(except for title XVI of the House bill, title XLVIII of the Senate amendment, and sections 5301 through 5303 of the Conference report,
WILLIAM F. CLINGER
(except for title XVI of the House bill, title XLVIII of the Senate amendment, and section 5301 through 5303 of the conference report),

From the Committee on Government Operations, for consideration of sections 461 through 471 of the House bill, and sections 1030 through 1033 and 3801 through 3809 of the Senate amendment, and modifications committed to conference:

JACK BROOKS
(except for the Competitiveness Policy Council provided for in sections 461 through 471 of the House bill, sections 3801 through 3809 of the Senate amendment, and sections 5201 through 5210 of the Conference Report),
JOHN CONYERS, Jr.,
STEVE NEAL,
FRANK HORTON
(except for the Competitiveness Policy Council provided for in sections 461 through 471 of the House bill, sections, 3801 through 3809 of the Senate amendment, and sections 5201 through 5210 of the conference report),

From the Committee on Merchant Marine and Fisheries, for consideration of title XI of the House bill, and title XLVI and section 2011 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
GLENN M. ANDERSON,
GERRY STUDDS,
DON BONKER,
WILLIAM J. HUGHES,
BOB DAVIS,
NORMAN F. LENT,
DON YOUNG,
NORMAN D. SHUMWAY,

From the Committee on Public Works and Transportation, for consideration of title XII of the House bill, and section 4502 of the Senate amendment, and modifications committed to conference:

NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
NICK RAHALL,
DOUGLAS APPLEGATE,
RON DE LUGO,
JOHN PAUL

HAMMERSCHMIDT,
ARLAN STANGELAND,
NEWT GINGRICH,
WILLIAM F. CLINGER,

From the Committee on Small Business, for consideration of title XIII and section 186 of the House bill, and titles XXXVII and XXXIX and section 1804 (insofar as it would add new section 661(d)(2)(B) to the Foreign Assistance Act of 1961) of the Senate amendment, and modifications committed to conference:

JOHN J. LAFACE,
NEAL SMITH,
IKE SKELTON,
NICK MAVOROULES,
JAMES H. BILBRAY,
JOSEPH M. MCDADE,
ANDY IRELAND,
SILVIO O. CONTE,

From the Committee on Small Business, for consideration of section 314 of the House bill (insofar as it would add new section 203(c) to the Export Administration Amendments Act of 1985), and modifications committed to conference:

JOHN J. LAFALCE,
NEAL SMITH,
IKE SKELTON,
JOSEPH M. MCDADE,
ANDY IRELAND,

From the Committee on Science, Space, and Technology, for consideration of section 911 of the House bill, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
BUDDY MACKAY,
TIM VALENTINE,
GEORGE E. BROWN, Jr.,
JIM SCHEUER,
MANUEL LUJAN, Jr.,
SHERWOOD BOEHLERT,
DON RITTER,
RON PACKARD,

From the Committee on Science, Space, and Technology, for consideration of sections 3852 and 3853 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
BUDDY MACKAY,
GEORGE E. BROWN, Jr.,
JIM SCHEUER,
MARILYN LLOYD,
MANUEL LUJAN, Jr.,
SID MORRISON,
DON RITTER,
CONSTANCE MORELLA,

From the Committee on Science, Space, and Technology, for consideration of section 3871 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
BUDDY MACKAY,
GEORGE E. BROWN, Jr.,
JIM SCHEUER,
MARILYN LLOYD,
MANUEL LUJAN, Jr.,
SHERWOOD, BOEHLERT,

From the Committee on Science, Space, and Technology, for consideration of sections 3881 through 3884 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DAVE MCCURDY,
DAN GLICKMAN,
BILL NELSON,
TOM MCMILLEN,
JIMMY HAYES,
MANUEL LUJAN, Jr.,
TOM LEWIS,
DON RITTER,

From the Committee on Science, Space, and Technology, for consideration of titles XL through XLIV, and sections 4503 through 4505 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
GEORGE E. BROWN, Jr.,
JIM SCHEUER,
MARILYN LLOYD,
DAN GLICKMAN,
MANUEL LUJAN, Jr.,
SHERWOOD BOEHLERT,
CLAUDINE SCHNEIDER,
DON RITTER,

From the Committee on Science, Space, and Technology, for consideration of section 4902 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
GEORGE E. BROWN, Jr.,
JIM SCHEUER,
MARILYN LLOYD,
DAN GLICKMAN,
MANUEL LUJAN, Jr.,
TOM LEWIS,
RON PACKARD,
JACK BUECHNER,

From the Committee on Science, Space, and Technology, for consideration of sections 461 through 471 and 904 of the House bill, and sections 2305, 3801 through 3809, and 3909 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
GEORGE E. BROWN, Jr.
(Except for sections 461 through 471 of the House bill, and sections 3801 to 3809 of the Senate amendment),
MANUEL LUJAN, Jr.,
SHERWOOD BOEHLERT
(Except for sections 461 to 471 of the House bill and sections 3801 to 3809 of the Senate amendment),

From the Committee on Science, Space, and Technology, for consideration of section 412 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
RALPH M. HALL,
ROBERT TORRICELLI,
MANUEL LUJAN, Jr.,

From the Committee on Science, Space, and Technology, for consideration of sections 3861 through 3867 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
DOUG WALGREN,
TIM VALENTINE,
MANUEL LUJAN, Jr.,
DON RITTER,

From the Committee on Rules, for consideration of title XVI and sections 114 (d) and (e) of the House bill, and sections 104, 107, 110, and 2131 of the Senate amendment, and modifications committed to conference:

CLAUDE PEPPER,
JOE MOAKLEY,
BUTLER DERRICK,
TONY P. HALL,
ALAN WHEAT,
TRENT LOTT,
GENE TAYLOR,

From the Committee on Armed Services, for consideration of sections 1030 through 1034, and 4901 of the Senate amendment, and modifications committed to conference:

LES ASPIN,
SAMUEL S. STRATTON,
NICK MAVROULES,

From the Committee on Armed Services, for consideration of section 1021 of the Senate amendment, and modifications committed to conference:

LES ASPIN,
NICK MAVROULES,
DUNCAN HUNTER,

Managers on the Part of the House.

From the Committee on Finance:

LLOYD BENTSEN,
DANIEL P. MOYNIHAN,
MAX BAUCUS,
DAVID BOREN,
BOB PACKWOOD,
JOHN CHAFEE,
BILL ROTH,
JOHN DANFORTH,

From the Committee on Banking, Housing, and Urban Affairs:

PAUL SARBANES,
ALAN J. DIXON,
JOHN HEINZ,

From the Committee on Commerce, Science, and Transportation:

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
J.J. EXON,
DAN RIEGLE,
JOHN C. DANFORTH,
BOB PACKWOOD,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
BARBARA MIKULSKI,
BROCK ADAMS,

From the Committee on Small Business:

DALE BUMPERS,
JIM SASSER,
LOWELL P. WEICKER, Jr.,

From the Committee on the Judiciary:

DENNIS DECONCINI,
PATRICK LEAHY,

From the Committee on Foreign Relations:

CLAIBORNE PELL,
PAUL SARBANES,
CHRISTOPHER J. DODD,

From the Committee on Agriculture, Nutrition, and Forestry:

PAT LEAHY,
JOHN MELCHER,
DAVID PRYOR,

From the Committee on Governmental Affairs:

JOHN GLENN,
LAWTON CHILES,
JEFF BINGAMAN,
TED STEVENS
(I object to the anti-Alaskan provisions and several non-trade provisions),

Solely for the consideration of sections 1029 through 1036 of title X:

ALAN CRANSTON,

Solely for the consideration of title XIV:

J.J. EXON,
JOHN C. DANFORTH,

Managers on the Part of the Senate.

□ 1515

ELECTION OF MEMBER AS CHAIRMAN OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Mr. GEPHARDT. Mr. Speaker, as chairman of the Democratic Caucus and by direction of the caucus, I call up a privileged resolution (H. Res. 429) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 429

Resolved, That the following Member, be and is hereby elected chairman to the following standing committee of the House of Representatives:

Committee on Public Works and Transportation: Glenn M. Anderson, California.

The resolution was agreed to.

A motion to reconsider was laid on the table.

HOUR OF MEETING ON TOMORROW

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 10 a.m. tomorrow.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Washington?

There was no objection.

AGREEMENT BETWEEN UNITED STATES AND THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 100-186)

The SPEAKER pro tempore (Mr. GRAY of Illinois) laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means, and ordered to be printed:

(For message, see Proceedings of the Senate of today, April 20, 1988.)

IMMIGRATION AND NATIONALITY ACT

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 428 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 428

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4222) to amend the Immigration and Nationality Act to extend for six months the application period under the legalization program, and the first reading of the bill shall be dispensed with. All points of order against consideration of the bill for failure to comply with the provisions of sections 302(c) and 302(f) of the Congressional Budget Act of 1974, as amended (Public Law 93-344, as amended by Public Law 99-177), are hereby waived. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and all points of order against said substitute for failure to comply with the provisions of sections 302(c) and 302(f) of the Congressional Budget Act of 1974, as amended (Public Law 93-344, as amended by Public Law 99-177), and with clause 5(a) of rule XXI are hereby waived. No amendments to said substitute shall be in order except pro forma amendments offered for purposes of debate and the amendments printed in the report of the Committee on Rules accompanying this resolution. Said amendments shall not be subject to amendment except pro forma amendments. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. MOAKLEY. Mr. Speaker, House Resolution 428 is a modified closed rule providing for the consideration of the bill H.R. 4222, which will amend the Immigration and Nationality Act to extend the application period under the legalization program.

The rule provides for 1 hour of general debate to be equally divided between the chairman and ranking minority member of the Committee on the Judiciary.

Mr. Speaker, the rule waives two sections of the Congressional Budget Act against consideration of the bill. Section 302(c) of the Budget Act prohibits the consideration of any bill that provides new budget authority, new spending authority, or new credit authority until that committee has filed its section 302(b) report. Since this bill would create new budget authority in fiscal year 1988 through the collection of fees from undocumented aliens applying for legalization, and the Committee on the Judiciary has not filed its section 302(b) report, the bill would violate section 302(c) of the Budget Act.

Mr. Speaker, the rule also waives section 302(f) of the Congressional Budget Act. Section 302(f) prohibits consideration of measures that would exceed the subcommittee allocations of new discretionary budget authority made pursuant to section 302(b) of the budget act. Since this bill would create new budget authority and the Committee on the Judiciary received no allocation of budget authority, the bill violates section 302(f) of the Budget Act.

Mr. Speaker, the rule makes in order an amendment in the nature of a substitute now printed in the bill as original text for the purpose of amendment. Section 302(c) and section 302(f) of the Congressional Budget Act are also waived against the consideration of the substitute.

The rule also waives the provisions of clause 5(a) of rule XXI against the substitute. Clause 5(a) of rule XXI prohibits appropriations in a legislative bill. Mr. Speaker, by extending the legalization program deadline the bill also extends the authorization for the Immigration and Naturalization Service to spend the application fees it receives. This authority constitutes an appropriation in a legislative bill and causes the bill to be in violation of clause 5(a) of rule XXI.

Mr. Speaker, the rule further provides that no amendments to the bill are in order except pro forma amendments offered for the purpose of general debate, and the amendments printed in the report accompanying this resolution. Said amendments are not subject to amendments except pro forma amendments.

Finally, Mr. Speaker, the rule provides for one motion to recommit with or without instructions.

Mr. Speaker, H.R. 4222 would extend through November 30, 1988, the period during which undocumented aliens could apply for legalization under section 201 of the Immigration and Reform Control Act of 1986. Under current law, the legalization period will end on May 4, 1988. The bill would extend the authority previously granted to the Attorney General to carry out the legalization program and authorizes $2 million for the disbursement of information regarding the change in the expiration date.

Mr. Speaker, this program was established under the immigration bill to reach those aliens that were eligible for legalization. To date there are estimated to be hundreds of thousands of eligible individuals that have not yet applied. The extension of the deadline to November 30, 1988, will allow for those illegal aliens that are eligible for

legalization to come forward and apply, and reduce the problems of a large illegal alien population.

I urge my colleagues to vote for House Resolution 428 and to pass the bill H.R. 4222.

Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in 1986 this Congress passed a monumental piece of legislation. The Immigration Reform and Control Act. That law has been working well since its implementation.

Today, we have before us a bill to extend the application period under the legalization program from May 4, 1988, to November 30, 1988. If this bill is adopted it means that the total application period will be approximately 18 months.

We should remember that the original Immigration Reform and Control Act passed in the House some 2 years ago provided for an 18-month legalization program. It was reduced to 12 months after conference with the Senate.

Passage of this bill will put us back to a legalization program of about the same length as contained in the original House-passed bill.

Mr. Speaker, it should be noted that the vote in the Judiciary Committee to report this bill was 22 to 12, and 10 of those Members signed dissenting views which appear in the committee report. In addition, the administration has taken a position strongly opposing the bill.

Mr. Speaker, the rule before us will allow the House to proceed to consider the bill to extend the application deadline for the legalization program. We should adopt the rule so that we can get down to business and complete action on the bill.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I rise in support of the rule but I will oppose the bill for several reasons. First of all, it will cost us about $124 million over the next 6 years and it will even cost the States more money and once again we pass laws and the States will incur some debt.

Second of all, under the amnesty program enacted last year the majority of illegal aliens eligible to apply have done so. Up to 1.7 million have already applied.

Do not forget here today we are talking about people who have entered the country illegally, 1.7 million of them. If we approve this bill today, what further type of message are we sending out, "If you want to come to America, jump the fence and maybe next year we will take care of you."

□ 1530

My grandparents on both sides were emigrants. They stood in line. They came into our country the right way.

While we let these people in, jumping the fence illegally, there were people standing in line trying to become U.S. citizens that were turned down. I think that is crazy.

Instead of finding new ways to help people who have jumped the fence illegally, we ought to be looking and scrambling for ways to try to help American citizens. They are having a rough time finding work, and taking care of their families and making their mortgage payments.

So, Mr. Speaker, again I feel very sorry for the many people in other parts of the world, especially Central America and Mexico. But I think America must help them to fish so they can feed themselves. We cannot take everybody in, and we certainly cannot send out a message to say that if you want to get American citizenship, all you have to do is jump the fence.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, amnesty is being turned into travesty. What started out as a well-intentioned project on the part of this House to couple amnesty for illegal aliens with sanctions to be placed on employers to try to tighten up our borders is rapidly deteriorating into a meaningless gesture with an attempt at an extension of the amnesty. Amnesty should be something which we hold up as sacrosanct and one which should be honored for what it is. To allow an extension of it in the face of untold rationales for why it would be granted simply weakens and poisons that concept of amnesty.

Mr. Speaker, this rule will permit two amendments to be offered which can ameliorate what I believe is the poisoning of amnesty, and I would hope that we will pay attention, close attention, to the substance of those amendments.

In the meantime, however, because it is not an open rule, I am constrained out of principle to vote against it even though I am the beneficiary of the exceptions granted by the rule for a possible amendment.

I repeat: What we are about here is to extend the period of amnesty without regard to what it ultimately does. It rewards the illegal aliens who for a thousand reasons have refused, or delayed, or procrastinated, or for some other reason failed to apply for amnesty. It makes us a laughing stock for not being able to do something with finality like secure our borders. It makes it silly to know that our taxpayers are not accorded any extension of the deadline past April 15 every single year except with severe penalties, except with certain good cause shown, and here we are in the business of extending the right of amnesty to illegal aliens.

Mr. Speaker, we ought to think twice about this and support the amendment that will come under the 5-minute rule later which will allow the extension of amnesty only upon good cause shown.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, I would just take this time to say that I support the proposition before us. That is that this rule is a fair rule, the accommodations have been made, and the members of the minority who wish to amend the bill before us will be given that opportunity. I would like to just at this point in time indicate to some Members, particularly on my side of the aisle, to please keep an open mind when this bill is before the membership.

Mr. Speaker, I know there are men and women of good will on both sides of this particular issue. But I would like all to at least take a look at the bill and analyze it in at least one way. Members should focus on the fact that this bill is not an expansion of the Legalization Program. This bill does nothing to increase the number of eligible people to be found within the Legalization Program. On the contrary this maintains the same number of possible eligibles. What it does is say that we ought to have a longer application period.

In some ways, the INS, who have done a magnificant job, I would say, have suggested that we in fact need some leniency. They have indicated that they would take less than full applications before the expiration date and then allow people to follow up thereafter. I think that is one of the things we ought to keep in mind.

If we believe it was right to have a Legalization Program, I think we would want it to work. It has worked well, but it has not worked completely. And that is for reasons beyond the control of the INS, but rather because of the nature of the situation. So I would just say as we go to this rule, and I hope adopt this rule which will allow full debate and consideration of amendments on the bill, that Members look openly at this particular bill. See what it is and see what it is not, and remember that we did vote for legalization some time ago because we thought it was the right thing to do. Today we have the question of the proper means by which we make it work.

People can agree or disagree on the proper position before us, but I hope they would keep in mind we are not

talking about expanding the pool of eligibles. We are talking about the application; that is, the means by which we make the program work.

I would argue and argue very strenously that since we adopted legalization as a proposition we ought to make it work so we will not have to revisit it in a year or 2 years or 3 years when at that point in time the argument might be made that we ought to expand the number of people that would be eligible. This does not do that. This allows us to act at the time when the program is still before us, and I hope Members will keep that in mind as we consider this rule.

Please vote the rule up.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Kentucky [Mr. ROGERS].

Mr. ROGERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I am not so much concerned about the rule as I am the bill. I suppose the rule will pass, and I am sure pass rather handily. But this bill should not be on the floor.

The legalization amnesty employer sanction deal that was worked out when the bill was passed last year was a very delicately balanced, finely tuned piece of work that this bill will do violence to. Make no mistake about that, make no mistake, when we extend the deadline that was finely tuned and put into the original bill, this bill does violence to that very intricate part of the arrangement that was delicately worked out and passed this House by only seven votes. So there are strongly held views about every single item in the amnesty bill that passed this body. This bill does violence to that agreement.

I can only surmise that those who are for extension are wanting extension to further broaden the categories of people who can eligibly come into the country and seek amnesty. That is the only reason that anyone could ask for an extension of the deadline, because we have begged people to fill out the papers and seek amnesty and seek legalization, and 1.8 million or so have.

How much longer do my colleagues want to beg people to give them the benefit of American citizenship? They have had all of these months. We have spent millions of dollars advertising and promoting and writing and giving everyone the wonderful chance to be a citizen of this country. Enough is enough. Enough is enough.

It is going to cost us between $25 million and $58 million to extend this deadline we are told by the INS; others say much more. And bear in mind, under the budget resolution we have just sent the conferees out on there is a spending cap on domestic spending, and every penny we spend on something like this is money coming off of the war on drugs, among other things. So money is tight, and this bill, among other things, is expensive.

Mr. SHAW. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I am happy to yield to the gentleman from Florida.

Mr. SHAW. Mr. Speaker, I would like to compliment the gentleman from Kentucky for his statement. I think that the rule we are operating on is a fair rule. It is making the major amendments that were made in committee acceptable, and for that I would thank the chairman of the full committee as well as the ranking members. But I think what the gentleman is saying is absolutely correct.

I think there is one other thing we have to talk about, and that is the terrible amount of confusion that is already out there with regard to this bill and with regard to this extension. If this extension passes, there is going to be even more confusion out there, because I think the thing is going to be laying in limbo for a while. We do not know whether the President is going to sign it, we do not know what the other body is going to do, and we do not know when the conference is going to come together, and we do not know if we are going to be able to meet those deadlines. So I think the more we mess with this thing, the more muddied the water is going to be, and the less clear it is going to be for those who are out there who were going to benefit.

So I think in trying to help these people we are actually hurting them. But I think the gentleman is quite correct, we do not have to beg these people to become citizens or legals in this country. We have set it out for them, and they have had long enough to comply.

Mr. ROGERS. I thank the gentleman from Florida for his comments. He is correct. We are going to send a very confusing signal south of the border and we are going to send a very confusing signal to the employers in this country who will be saying here you are messing again with the deadline that we have all planned ourselves around and you are going to do violence to the agreement that was reached in this body. You are going to send a signal south of the border that we really did not mean it when we set a deadline.

They are beginning now to have the final crunch of numbers of applicants, and if we say that the deadline is next year sometime, or what have you, then it is going to trickle back down again.

Since this bill was passed, there have been many attempts to liberalize the legalization provisions. The SAW and the EVD amendments already have eased legalization requirements, they have allowed untold hundreds of thousands of aliens to remain in our country. What is going to be next? Who knows.

I am sure that if this extension passes there will be efforts continuing to expand the eligibility requirements of those who are allowed to apply for amnesty and legalization. So I urge my colleagues, whatever they do on the rule, is not important, but it is terribly important what they do on the substance of the bill, and I urge a "no" vote on the bill.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, but I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. BUSTAMANTE].

Mr. BUSTAMANTE. Mr. Speaker, I rise in support of the rule for the consideration of H.R. 4222, to extend the application period for legalization until November 30, 1988. Although it would have been preferable, to consider this simple deadline extension legislation without any amendments, I appreciate the Rules Committee's efforts to limit amendments.

With only 2 weeks left before the current application deadline passes, we do not have the time or the luxury to tinker and make substantive changes to the Immigration Reform and Control Act of 1986. For this reason I am going to urge my colleagues to oppose both of the amendments that have been made in order during consideration of H.R. 4222.

When Congress passed immigration reform in 1986, we knew that it was imperfect and hopefully we can improve on it. I know that many of my colleagues, if this were the right opportunity, would offer amendments today. For example, I would like to see us clarify the family unity policy. But this is not the right time to do this. What we are considering is simply extending the deadline of a program. Usually this type of legislation is passed under suspension of the rules. It is not unusual for us to change deadlines due to implementation problems or changes in circumstances that often arise.

Just a few weeks ago we passed a bill under the suspension calendar that deferred the deadline for a second time for a program that provides for the health care of certain former military spouses because the Defense Department has not implemented the new program to care for these beneficiaries. Why then are we not considering this deadline extension under the suspension calendar? Because this is an immigration program. Despite that fact, let me make clear that we are not deciding today the merits of legalization. We did that 2 years ago. Today we will be voting on whether the deadline we voted for 2 years ago, still makes sense now that we know the cir-

cumstances under which the program has operated.

During the floor debate I will make the case for extending the deadline for the Legalization Program as recommended by several independent studies that have recognized the serious delays that came up due to the difficult task of implementing such a massive program in such a short time.

Mr. Speaker, I urge my colleagues to support this rule and vote for the extension and against all amendments.

□ 1545

Mr. QUILLEN. Mr. Speaker, I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 428 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4222.

The Chair designates the gentleman from Massachusetts [Mr. DONNELLY] as Chairman of the Committee of the Whole, and requests the gentleman from Minnesota [Mr. OBERSTAR] to assume the chair temporarily.

□ 1546

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4222) to amend the Immigration and Nationality Act to extend for 6 months the application period under the legalization program, with Mr. OBERSTAR [Chairman pro tempore] in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from Kentucky [Mr. MAZZOLI] will be recognized for 30 minutes and the gentleman from Georgia [Mr. SWINDALL] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I rise to express my support for the bill before us, H.R. 4222, to extend the period during which persons may apply for legalization under the Immigration Reform and Control Act of 1986, Public Law 99-603.

It has been now nearly a year and a half since that landmark piece of legislation was passed and signed by the President in 1986. It has worked very well. It has not worked perfectly. But given its landmark and watershed status, it has worked remarkably well.

A few problems have arisen. It is not remarkable when one considers the nature of this piece of legislation. One such problem is being dealt with by the bill H.R. 4222. I introduced this piece of legislation on March 22. It extends the legalization program under the bill by something over 6 months in order to make the program coterminous with the other legalization program in the bill dealing with special agricultural workers.

My bill was adopted by the Subcommittee on Immigration, Refugees and International Law of the Committee on the Judiciary by a vote of 7 to 3 and by the full Judiciary Committee by a vote of 22 to 12. The legalization program, as we remember, is intended to provide equity and justice to those illegal aliens who are otherwise law abiding people who have lived in the United States continuously since 1982 and who have good work records and have established roots in their communities.

The program is operated not as a blanket amnesty for all undocumented aliens, but as a case-by-case adjudication of each individual applicant. Only those who can show they have been in this country since 1982 can qualify.

Legalization, as established by the 1986 act, is altogether consistent with the fair, humane, and generous immigration traditions of the United States. It is a one-time opportunity whose purpose is to treat humanely the shadow population of undocumented aliens living and working in this country.

Mr. Chairman, H.R. 4222 does not alter or modify the legalization program, nor the characteristics which I have just outlined.

The procedure remains exactly as enacted in the 1986 act, except H.R. 4222 would extend by a bit over 6 months the period within which people can make their applications.

Why did we seek this extension? Let us first talk about the numbers. As of last Thursday, fewer than 1.2 million persons had applied for the regular legalization program. Of these, only 729,000 had already received their temporary residency cards which is the first formal step in the process by which aliens can live permanently in this country, and, maybe, earn their citizenship.

It is worth noting that legalization is a two-step process, because after receiving temporary residency status an alien must remain in that status for not less than 18 months after which the individual has 1 year in which to apply for conversion to permanent residency. I might say that move from temporary to permanent is not an automatic move. Among other things, the alien applying for permanent residency must show a working knowledge of or be enrolled in courses to learn the English language, our governmental system, our history.

Those who cannot meet these requirements will revert to their earlier undocumented status and be subject to deportation.

In addition to the 1.2 million people who have applied for legalization under the regular program, another 400,000 have applied for legal status under the special agricultural worker program.

Mr. Chairman, these numbers are sizable but they fall short of the total numbers anticipated when the program opened last May 5. Without that extension there could be a sizable shortfall in the legalization program. This could compromise to some extent the success we have had with employer sanctions in our border enforcement program, all component parts of the IRCA, the immigration reform bill, by leaving in place in our country a large population of the undocmented.

My bill, therefore, is designed to make sure this does not happen and that the original goals of legalization are met.

The original bill in the House 2 years ago called for an 18-month legalization. It was reduced to 12 months in conference. I felt the conference probably suited the purpose then but circumstances have changed which were not foreseen or foreseeable and that requires the bill before us, H.R. 4222.

I might say parenthetically that there are other adjustment programs in this bill. We adjust agricultural workers. They have an 18-month period to apply. We adjust Cuban and Haitians entrants; they have 2 years or 24 months to apply.

The registry program which we have updated is unlimited. It seems a little bit ironic and anomalous to require the most difficult program, this one, legalization, the shortest period of time in which to apply and get all the paperwork together.

There is another reason to support H.R. 4222. Policy changes were adopted by the Immigration Service after the bill began, after the legalization program began last May. Those primarily required or affected continuous residency of the applicant and the family fairness doctrine.

These and other rule changes are generous and sensitive and certainly compassionate and reflect well on the Immigration Service. But they were adopted after the legalization program began.

Some applicants were rejected in the early going and those people now should have the opportunity to apply under the new set of standards. With-

out an extension they might not be able to so qualify.

Another difficulty has been the advertising and public outreach program. In this era of budget tightening the Immigration Service did not have the requisite money at the top of the program to get out the word to establish this outreach program. As a result, it was not debugged and in working order until 1988. In addition, Mr. Chairman, while INS has handled the bulk of the legalization applications, qualified designated entities, church groups and others are also qualified for that. They got off to a very slow start in part because of deep seated worries and concerns about the bona fides of the program and of the attitude of the INS.

Those have now been laid to rest and with an additional period the QDE's will be able to do the job they say they want to do which is to go out and reach all the people who are yet to be reached.

There are other factors that commend this bill. Mr. Chairman, the program has so far been self-funded and it will be self-funded so that the budgetary impact on the Immigration Service should be bearable.

The structure of the act is that the INS Legalization Office is now numbering some 107, it will be kept open anyway through November 30 in order to handle SAW applications, under the Special Agricultural Worker Program. So that there would not be a particularly heavy burden on the Immigration Service since their offices would remain open in any event.

So in sum, Mr. Chairman, I ask my colleagues to join me and the members of the Committee on the Judiciary in approving H.R. 4222 which provides for 6-plus months for persons to apply for legalization under the Immigration Reform and Control Act. It does not change the program. It neither expands nor contracts the program. It does not provide additional qualifications for people who are unqualified. It simply gives an additional period of time for qualified people to come forward.

The CHAIRMAN. The gentleman has consumed 8 minutes.

Mr. SWINDALL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to H.R. 4222 because, if passed, the net effect would be to take a bad idea and make it worse. The bad idea, of course, is the whole notion that we want to reward those individuals who came into this country illegally while at the same time penalizing those individuals who chose to attempt to come into this country legally.

The reason it would penalize those individuals who chose to obey the law is those individuals who came in illegally take valuable space that is highly sought after and is competitively distributed through our immigration quotas.

It also, however, ignores a very delicate political balance that was struck in the 99th Congress to get this bill passed in the first instance. I do not think anyone in this Chamber would deny the fact that the amnesty provision was the most divisive issue contained in the Immigration Reform Act that was passed in this body in the 99th Congress.

The specific part that was highly contested was exactly how long we would allow the window of opportunity to remain open.

The House version was 18 months, and the Senate version was 12 months. For those individuals who would argue this is insignificant, I would remind them the conferees reduced the time to 12 months in order to make certain that that delicate balance between employer sanctions and amnesty, and all of the other various provisions that made up one of the most complex immigration reform bills ever pased in this body could in fact be passed.

Now what we are doing is coming in through the back door and extending the legalization period from 12 to 18 months when in fact that delicate provision of amnesty passed by only seven votes in the last Congress.

The second part of this bill that I think makes it bad legislation is the lack of necessity.

I listened to the Commissioner of Immigration testify before the Subcommittee on Immigration that 96 percent of those individual aliens that are in this country that woud qualify are aware that they have the opportunity and have had the opportunity since last year to step forward and take advantage of this one time offer.

According to testimony before the committee, the entire legalization process takes 30 minutes. What we are really arguing here is that in order to accommodate the procrastinators we are going to pass a bill that will end up costing the American taxpayers millions of dollars. I think it is ludicrous to ask the American taxpayers to pay that type of tab to basically accommodate procrastinators or individuals who simply have not thus far found it convenient to step forward and take advantage of probably the most significant offer ever made.

Given the fact that there is 96 percent awareness among potentially eligible aliens, what we are really saying is that somehow American citizenship is not valuable enough to come forth by May 4.

The next thing that I think we must focus on, particularly in these deficit-ridden times, is the cost.

We know for a fact that it will cost $7.5 million per month during each of the 18 months of this extension period. That is $58 million.

Now in order for that to be offset through the application process it would be necessary for 300,000 additional applicants to pay the fee. According to the INS Commissioner that is highly unlikely. So we are asking the American taxpayers to pick up the difference in order to accommodate those procrastinators who have not as yet taken advantage of this opportunity.

But that is not all of the cost. According to the Congressional Budget Office in a letter dated April 11, 1988, to our committee chairman, and I am quoting here:

Extending the legalization program would increase Federal outlays by $10 million in fiscal year 1988, $46 million in 1989, rising to $90 million in 1991.

It goes on:

The net increase in the deficit would total about $123 million over the 1988-93 period.

But that is not all.

In addition to that we find that States would incur additional costs.

Specifically, according to the same letter, and I am quoting:

The additional 100,000 aliens—

Estimated to come in under this extension—

Would raise costs in States' public assistance, public health, and education programs by an estimated $20 million in 1989, $50 million in 1990, and $55 million in 1991.

□ 1600

I would like, Mr. Chairman, to introduce this letter as part of the RECORD.

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 11, 1988.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN. The Congressional Budget Office has prepared the attached cost estimate for H.R. 4222, a bill to amend the Immigration and Nationality Act to extend the application period under the legalization program.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, APRIL 11, 1988

1. Bill number: H.R. 4222.

2. Bill title: A bill to amend the Immigration and Nationality Act to extend the application period under the legalization program.

3. Bill status: As ordered reported by the House Committee on the Judiciary, March 31, 1988.

4. Bill purpose: H.R. 4222 would extend the legalization period created by the Immigration Reform and Control Act (IRCA—Public Law 99-603) until November 30, 1988. Under current law, the legalization period will end on May 4, 1988.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992	1993
Direct spending:						
Estimated budget authority	13	7	5	4	23	23
Estimated outlays	10	46	85	90	−126	39
Estimated revenues	13	5	2	1		
Net budget impact—estimated increase or decrease (−) in the deficit	−3	41	83	89	−126	39

The costs of this bill fall within budget functions 500, 550, 570, 600 and 750.

Basis of estimate: This estimate assumes that the bill would be enacted around May 1, 1988. All programs affected by extending the application period have direct spending authority. These include the major public assistance programs and the Immigration and Nationalization Service's (INS) legalization operations. As is shown in the table above, extending the legalization program would increase federal outlays by $10 million in fiscal year 1988, $46 million in 1989, rising to $90 million in 1991. In 1992, net outlays would be negative because of reduced spending from funds previously appropriated for Interim Assistance to States. Federal revenues would increase by $13 million in 1988, $5 million in 1989, $2 million in 1990, and $1 million in 1991, because of an increase number of applications for legalization. The net increase in the deficit would total about $123 million over the 1988-1993 period.

Extending the application period for legalization for an additional six and three-quarter months would almost certainly increase the number of unauthorized aliens ultimately granted resident status. How many additional aliens would apply for legalization during the extra period is very uncertain. Based on the number of applications to date and on discussions with INS personnel, CBO has assumed that an additional 100,000 aliens (above CBO's baseline) would apply and be granted resident status during the extra period. This additional number of aliens would be about 8 percent more than the estimated 1.3 million aliens granted resident status during the original 12-month application period ending May 4, 1988.

Entitlement Programs. Legalization raises costs in a number of federal entitlement programs, whose benefits unauthorized aliens either cannot or do not receive. These programs and their associated costs are shown in the table below. Outlays in the Supplemental Security Income, Unemployment Compensation, Disability Insurance, and Medicare programs are estimated to increase by an insignificant amount in 1988 and by $19 million in 1993. Medicaid outlays would also rise, but they would be fully offset in fiscal years 1988 through 1991 by a reduction in spending for Interim Assistance to States for Legalization. Under the Interim Assistance program, certain costs to the federal government—including Medicaid costs—are deducted from the $1 billion appropriated in each year 1988 through 1991 to provide assistance to states. Finally, except for the reduction caused by the added Medicaid costs, outlays for Interim Assistance to States would remain unchanged over the entire six-year period but they would be speeded up. The additional 100,000 aliens would raise costs in states' public assistance, public health, and education programs, by an estimated $20 million in 1989, $50 million in 1990, and $55 million in 1991. Because the amount of Interim Assistance is fixed over the four-year period, these increased outlays would reduce spending in 1992 from previously-appropriated funds by an estimated $165 million.

INS Legalization. Under the provisions of the IRCA, the INS finances the legalization program with fees paid by the applicants. Assuming that around 105,000 additional applications are received, CBO estimates that additional revenues from application fees would total $13 million in 1988, $5 million in 1989, $2 million in 1990, and $1 million in 1991, relative to the CBO baseline. This estimate includes additional revenues from fees charged during the second phase of the legalization program, permanent residency applications.

These receipts would be available for obligation without appropriation. Based on information provided by the INS and the Office of Management and Budget, CBO estimates that the additional revenues from application fees would equal the additional costs of extending the legalization program, as is shown in the table below. Even with the existing deadline, many INS offices would remain open to process existing applications, administer the Special Agricultural Workers program, and to prepare for the permanent residency phase of the legalization program. The increased number of applicants would also increase the outlays for the permanent residency phase of the program. CBO expects that certain INS offices—particularly those in New York, Chicago, and Los Angeles—would need some additional staffing, resulting in increased outlays for the program of $10 million in 1988, $8 million in 1989, $2 million in 1990, and $1 million in 1991.

FEDERAL SPENDING FROM H.R. 4222

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992	1993
SSI (Function 600):						
Estimated budget authority	(1)	2	3	3	3	3
Estimated outlays	(1)	2	3	3	3	3
Unemployment compensation (Function 600):						
Estimated budget authority						
Estimated outlays	(1)	5	10	10	10	10
Disability insurance (Function 650):						
Estimated budget authority						
Estimated outlays	(1)	1	5	5	5	5
Medicare (Function 570):						
Estimated budget authority						
Estimated outlays	(1)	(1)	(1)	1	1	1
Medicaid (Function 550):						
Estimated budget authority	(1)	10	15	15	20	20
Estimated outlays	(1)	10	15	15	20	20
Interim assistance to States for legalization (Function 500):						
Estimated budget authority	(1)	−10	−15	−15		
Estimated outlays	(1)	20	50	55	−165	
INS Legalization Program (Function 750):						
Estimated budget authority	13	5	2	1		
Estimated outlays	10	8	2	1		
Total direct spending:						
Estimated budget authority	13	7	5	4	23	23
Estimated outlays	10	46	85	90	−126	39

[1] Less than $500,000.

6. Estimated cost to State and local governments: The additional 100,000 aliens granted resident status would increase state spending in public assistance, public health, and education programs. These additional costs would be covered during the 1988-1991 period under the Interim Assistance program discussed earlier. However, these increased state costs, as well as the increased cost of Medicaid to the federal government, would reduce the previously-appropriated but unspent funds that states could have used to cover any additional spending from legalization in 1992. For this reason, state spending would be increased in 1992 by an estimated one hundred sixty-five million dollars. Moreover, in 1992 and 1993, states' costs in their Medicaid and General Assistance programs are estimated to increase by about $40 million a year as a result of the extension of the application period for legalization.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts (226-2860), Jan Peskin (226-2820), and Marianne Page (226-2720)

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

The next point I would like to make is by our considering the bill, that the INS Commissioner has already stated on the record that he will recommend to the President to veto this bill. Assuming that the bill is vetoed and the veto is sustained, we are in effect hurting the very people we say we are trying to help, because the extention rumor that has already started in the eligible community might well cause those individuals to misread what the facts are and thus fail to apply between now and the May 4 deadline.

The worst thing that we can do is add to the confusion by introducing and passing legislation that the President will veto when this body or the other body may well sustain that veto.

But imagine what type of confusing signal it sends to Mexico and the remaining countries in Central America in terms of, "Hey, the Congress of the United States after having last year given us this opportunity to take advantage of Congress' decision to reward people that break the law, have now extended that window of opportunity. What makes us think they will not next year reopen amnesty one more time? So let us go illegally enter the United States now in order that we, too, may be eligible for the next amnesty package."

For those who say this likelihood is not logical, I would suggest that it is totally logical given the illogical nature of our now debating this issue having just debated the same issue in the last Congress when we reached a very delicate balance. To come in today and try to extend amnesty by 18 months and ask the American taxpayers to foot the bill is not only illogical, it is outright unconscionable.

For all of the reasons I've mentioned I would ask my colleagues to vote for the American taxpayer for once. Let us give them a break. Let us not reward procrastinators. Finally, by voting against this bill we are in effect saying that if American citizenship is not worth going down to the INS office today and filling out the application and taking 30 minutes, what in the world is?

Mr. MAZZOLI. Mr. Chairman, I yield such time as he might consume to the gentleman from New Jersey [Mr. RODINO] the distinguished chairman of the committee.

Mr. RODINO. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, the bill before us is a very simple, a modest request and notwithstanding the fact that some of the individuals who have preceded me in the well have talked about the amount of money that is going to be involved in expenditures in order to try to fund properly this legalization program, already money had been appropriated, a sufficient amount of money had been appropriated, estimating that perhaps there might be some 2 million or more undocumented aliens who might become eligible for the legalization provision which we had enacted in the Immigration Reform and Control Act.

It is true that the amnesty provision did engender a great deal of debate, but the House did pass, the President was interested enough to continually urge this Member to take this bill up, and always there was an estimate on the part of the Immigration Service and those of us who were interested in the bill that there might be some 2 million or more eligible undocumented aliens who might be able then to take advantage of the legalization provision, come out of the shadows of the society they are now in, and avail themselves of the opportunity to legalize and live as decent citizens.

The whole import of the amnesty provision was to do as much as we possibly could within that period of time, but to provide those individuals who are already apprehensive of what the Immigration Service might do should they come forward, to give them every opportunity to come forward, this notwithstanding the fact that I applaud the Immigration Service for having done the job that it has done up until now, and only recently actually I think doing even more, recognizing the fact that there were a number of people who, apprehensive, afraid of what might occur to them, afraid of the possible separation from families, afraid to come forward at all, the Immigration Service itself finally has conducted an extensive outreach program, knowing that there are maybe 400,000 or 500,000 more who are potentially eligible, who could become those whom the law might then provide with legal status.

It would seem to me to be the humane thing to do to recognize that we who had intended to provide these people with this kind of an opportunity failed to do all that was necessary to do, because this bill was enacted in November of 1986, but it was not until May that the Immigration Service got the wheels turning, began to reach out, began to issue the contracts and began then the process of which we know began to turn rather slowly.

It seems to me we have fallen short of the number that we had estimated might avail themselves of that provision of legalization. The amount of money that is being discussed here, I understand, has already been not only appropriated, but that amount of money and other amounts of money that might be still necessary if we were to extend this program, that amount of money would be funded, because this is a self-funding program. So there would be no extra cost. Whatever there might be, I am sure, would be minimal and would certainly be worth not only this effort but would be in keeping with the fine tradition of this country that has extended itself on occasion to these people who for so long have lived in the shadows of our society.

I think that it is only incumbent on us who for a period of many, many years undertook to write this measure that at this time we say we are not changing the law substantively. What we are doing is merely reaching out once again not to those who are the procrastinators but to those who were afraid, to those who did not understand, to those who have been apprehensive, who were afraid that they might be separated from their families.

I say that this is certainly the kind of effort that is worthy of our Nation. It is in keeping with its fine tradition, and I would hope that we find it within ourselves again to exercise that kind of compassion, that kind of humane spirit which will maybe cost us just a little more but I am sure will give 300,000, 400,000, 500,000 people who now are so-called illegals, working illegally, give them an opportunity to be able to come up out of the shadows and live as decent human beings and continue to be providers in this society.

Mr. Chairman, this bill, H.R. 4222 is a reasonable, practical and, above all, humane proposal to assure that the greatest number of aliens eligible to legalize their status will avail themselves of that opportunity.

I am supporting this extension because I am personally convinced that hundred of thousands of potentially eligible applicants have not applied and may not be able to apply by the current May 4 deadline. This is particularly true in my area of the country, the Northeast, where the number of applications are shockingly low—as of April 14—only 113,500 have filed applications out of a national total of some 1.2 million—less than 10 percent.

The fundamental purpose of the Immigration Reform and Control Act of 1986 was to resolve the undocumented alien problem. It did so by creating a system of sanctions for employers who knowingly hire undocumented aliens and a legalization program for those aliens who have been here since before 1982. Over a 15-year period the undocumented situation was deteriorating to the point where many people were wringing their hands and complaining that our borders were completely out of control. The country was being engulfed by literally millions of aliens entering clandestinely into our country and the labor market. The result, you are all aware of, were burgeoning underground populations suffering mistreatment and abuse by unscrupulous employers and landlords. They were living a life of constant fear of discovery and deportation, and passive acceptance of substandard—and in some cases—inhumane working conditions and slave wages.

To correct these widespread abuses and to bring this underground population "out of the shadows," a one-time generous legalization program was devised. It was considered to be a reasonable and decent thing to do to regularize the status of those aliens who had been residing in the United States since before 1982, who were leading stable, productive lives and who has demonstrated an honest intention of remaining in the United States.

With a companion program of employer sanctions and a reasonably enhanced enforcement system, both in the interior and at the borders, it was hoped that the undocumented alien population, not eligible for legalization would voluntarily return.

As my colleagues know, I have been a strong supporter of extending the legalization program for an additional year. However, as a realist, I believe in compromise. I did not believe that a 1-year extension could be enacted into law. I do, however, believe that a straight 7-month extension is proper and politically achievable. I think such a compromise is fair and is in keeping with the spirit of the 1986 law.

I say this because you will recall that the immigration reform bill that passed the House in October 1986 contained an 18-month legalization program. It was only after the Conference Committee met that the program was reduced to 12 months.

Contrary to some observations by opponents of this bill, there was not a great deal of discussion over the length of the program in conference, instead more emphasis was placed on making sure legalization was a "One-shot" proposition. I thoroughly agree with the one-shot nature of this program, but I believe now as I believed then, that an 18-month application period for the program will enhance full participation in it.

For this extension to succeed, the administration must, in good faith, make a renewed effort to provide an effective outreach and counseling service to convince those who are eligible to apply.

Many opponents to this legislation address the additional cost to the Immigration and Naturalization Service, arguing that if not enough eligible ap-

plicants are forthcoming, revenues will not offset the costs of keeping legalization offices open until November 1988.

The fact of the matter is that, notwithstanding this extension, the majority of INS legalization offices will remain open in order to start the second phase of the program—that of accepting permanent residence applications for changes of status. These sites, therefore, would still be open to process additional legalization applications. Certainly, personnel changes to staff these offices can be easily adjusted according to the volume of business.

Mr. Chairman, as I stated at the outset, I am convinced that there are hundreds of thousands of undocumented aliens out there who have not applied, but who are eligible to apply in accordance with the spirit of that law and who came before 1982. Why not give these decent, law-abiding people a chance to come forward?

We must consider for a moment the psychological transformation an undocumented alien must go through to convince himself to apply for legalization. All his life he has feared the Immigration Service—the "Migra" to him—and has done everything possible to remain undetected by these officials who represent arrest, incarceration, deportation, separation of family, et cetera.

Suddenly, the much fear "Migra" is urging him to come forward to legalize his status. There are natural trepidations, concerns, and certainly a great deal of mistrust until he is convinced that the offer is valid. Experience is the best remedy for these misgivings.

Regrettably, this attitude of fear—albeit misplaced—coupled with the inherent delays in starting up the program, has had a adverse impact on the number of applications received.

First, there was a delay in awarding a major public information and outreach contract. Second, throughout the program, INS has made a number of important changes to the eligibility requirements, in many cases rendering eligible many individuals who were earlier told they did not qualify, and third the grassroots outreach that the immigration reform law contemplated was inadequate.

I ask myself, what are the consequences if we terminate this legalization program before we are convinced that all eligible aliens have applied. We will have a residual illegal population we will have to seek out and deport; we will force families with equities, such as U.S. children, to leave or continue to survive in an underground economy—the type of economy we sought to eliminate by the reform act; we will see pressures develop for future legalization programs and we may see a flood of private immigration bills on behalf of aliens who qualify, but who did not apply for the legalization program for one reason or another.

Mr. Chairman, what we are asking for in H.R. 4222 is an insurance policy on a legislative act that took years to develop and pass. We must make sure that the basic objective of the legalization program is achieved. An extension of time to apply will certainly bring us closer to that goal.

Mr. SWINDALL. Mr. Chairman, I yield 3½ minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I oppose this bill and a year and a half ago I opposed the 1986 Immigration Reform Act largely because I opposed the blanket amnesty provision which allowed illegal aliens to achieve legal resident status. No matter how much compassion I had for individual cases, I felt it was wrong to reward those who knowingly circumvented American immigration laws and unfair to those who stood in line for years and years to come into this country legally.

For example, I have worked on cases in my district office where prospective immigrants with close relatives already living in the United States have waited 10 years to emigrate from Hong Kong. The situation is even worse for a Romanian man who has waited under harsh political circumstances for 6 years so that he may join his sister in New Jersey. In my opinion, the immigration problem we should be addressing are the laws which make it so difficult for Europeans to come to this country.

That is why I find it incomprehensible that this body would now add insult to injury to those people who have waited faithfully and once again change the rules to favor those who continue to violate our laws.

Now, let's be very clear on the facts: The legislation before us today would extend the legalization period till next November at a cost of $3 to $7 million per month, despite the fact that the U.S. Government has already spent millions of dollars to advertise the program and process the applications, and despite the fact that over 1.4 million illegal aliens have filed for residency.

The Immigration and Naturalization Service has fulfilled its duty and obligation under the terms of the 1986 Immigration Reform Act. To its credit, the INS has in some cases ignored the letter of the law and allowed certain illegal aliens to stay in this country when they did not qualify for amnesty because the INS did not want to split up families. I think the INS should be commended for their humanitarian concern. Additionally, the INS is now permitting amnesty applicants to file simplified legalization forms by the May 4 deadline and then provide all the supporting documentation within 2 months after the deadline. In other words, the INS has already bent over backward to help as many people as possible qualify for amnesty.

As for the argument put forward by supporters of this bill that we need to extend the legalization period because otherwise the sanctions placed on employers for hiring illegal aliens will be impossible to implement. This is a specious argument and one that is totally unsupportable.

But aside from all the logic of the argument against this extension, there is a more fundamental issue—this bill sets a dangerous precedent. If we pass this bill what we would be saying to citizens and foreigners alike is that U.S. immigration laws are not to be taken seriously, but are there to be broken.

I strongly oppose H.R. 4222, and I would urge my colleagues to vote against this legislation.

Mr. MAZZOLI. Mr. Chairman, I yield 4½ minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, this is a good day. We are here on the floor with an important piece of legislation.

I want to thank the chairman of this committee and the chairman of the subcommittee for helping us get here.

Let me address some of the points. First, the delicate balance of the immigration bill. I am a supporter of the immigration bill, and I support with equal intensity the amnesty provision and the sanctions provision. Indeed, there was a delicate balance, a delicate balance that was supposed to recognize that amnesty would be full and flowering, that enforcement would be real and tough.

If you look at the debate on the floor last year, people mentioned there would be 10 million new people who would come forward by amnesty. The INS initially estimated 4 million. Then when the numbers were lower, 2 million; so far only a little more than 1½ million have applied, hardly the bugaboo that was raised on the floor.

□ 1615

The number is low. Why do we come forward with this bill? Not as the gentleman from Georgia [Mr. SWINDALL] has said, to reward procrastinators. That would be a waste of all of our time, but rather because through no fault of the INS and no fault of anybody's, the process by which this bill worked was much slower than we anticipated.

When we debated the amnesty provisions in this Chamber, we knew that it would be difficult to get those who had lived in the shadows to come forward. The INS had been their hunter, their Javier for years and years, and now all of a sudden they were going to have to trust the INS.

Why did we think that they would? Not because of an advertising program, not because the INS said, "Never mind those years of hunting down immigrants," but rather because there would be green cards, temporary green cards out in the streets. When someone saw that their relatives, their friend, their neighbor had gotten one, they would say, "Hey, there is a new INS, I will come forward and apply."

Unfortunately those green cards did not get out there very quickly. As of January 31, the number was much, much smaller than we anticipated. I believe it was somewhere in the nature of between 400,000 and 600,000 that were out there despite the fact that over 1 million people had applied. So people did not get the message until recently and they are getting the message now as we have seen because the numbers have increased.

The real reason is not to reward procrastinators, not to say that people are lazy but to let amnesty work. I would say to my colleagues particularly on the minority side of the aisle, next year we are going to defend sanctions, something that had support. If we can say that we took that extra step, that we erred on the side of humanity and compassion and decency, and let amnesty be full and flowering, then we will be able to get this Congress and this country to support sanctions as well.

Let me talk about costs. It is said that this would raise costs. Hooey. First the gentleman from Georgia [Mr. SWINDALL] estimated 18 months. We have already had 12 months, and the program has been self-funding. It will be self-funding for the next few months as well because people will have to pay as they have in the past to become citizens, as well they should. I agree with the gentleman from Georgia on that point.

What about this $123 million? I say to my colleagues that money was already appropriated. We appropriated $4 billion when we passed the legislation because of the costs to the States.

That money is there, it is not new money, it is appropriated money. So I plead with my colleagues to let us be generous, let us be humane, let us err on the side of compassion as the immigration bill intended so that we can make this noble experiment in both amnesty and in sanctions work. Let us not turn our backs, let us have a generous vision that was envisioned by the authors and pass this minimalist extension.

Mr. SWINDALL. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. FISH], the ranking member of the Committee on the Judiciary.

Mr. FISH. Mr. Chairman, I rise in support of H.R. 4222, legislation to extend the legalization period until November 30, 1988, and I urge my colleagues to support this legislation as well.

I was a member of the Select Commission on Immigration and Refugee Policy. Statistics furnished by that Commission during the debate on the Immigration Reform and Control Act indicated that, as of 1978 to 1980, there were 3.5 to 6 million undocumented persons residing in the United States, and that as many as 250,000 to 500,000 were entering the country annually. To date, only about 1.5 million individuals have applied for legalization. Therefore, if the program ends in 3 weeks' time, as is now scheduled, perhaps as many as 1 million or more eligible people will remain undocumented. Perhaps 50 to 75 percent of the eligible population of illegal aliens have not yet applied for legal status. These individuals will remain in the shadows unless H.R. 4222 is enacted. Then who oppose this bill should recognize that the million plus will still be here after May 4.

No one is sure of the exact numbers of eligible undocumented aliens that have not yet applied for legalization, or the exact reasons why they have not applied. Some believe that fear of apprehension and concerns over dealing with the INS and identifying themselves continue to be the reasons for their failure to apply for legalization. In addition, the lack of a consistent and clear policy on how families would be dealt with in the legalization program has been suggested as having a very negative impact on participation rates. Additionally, many undocumented individuals and families who otherwise qualify for legalization may not have applied because of the monetary expense involved.

Mr. Chairman, it has been argued that this legislation should be opposed because of the additional costs that might be incurred due to an extension in the application period. However, additional costs assume that insufficient applicants will come forward to pay for this extension. This will not happen if INS vigorously follows Congressional mandates. In addition, nothing prevents the Immigration Service from reducing overhead and personnel expenses during this extension period, should figures indicate that aliens are not applying as expected.

Mr. Chairman, Congress passed the legalization provision in the 1986 act to give all aliens qualifying for legalization an opportunity to become legal permanent U.S. residents. This extension is needed to encourage the still remaining eligible aliens to come forward and apply for legalization.

During the initial stages, the legalization program experienced a series of logistical delays that effectively curtailed the application period. First, the public education program was slow in getting started in informing the eligible population about this complicated program. Second, the eligibility rules have changed significantly since the beginning of the program, and numerous individuals initially deemed ineligible are now eligible. In addition to the already ongoing publicity campaigns, this extension requires INS to implement local community outreach programs to encourage this remaining population to apply.

In sum, I believe that this extension of time can only help in alleviating the fears and problems that eligible applicants may be facing. It would far outweigh the cost considerations cited by opponents of this legislation. Therefore, I urge my colleagues to vote for passage of H.R. 4222.

Mr. MAZZOLI. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. LUNGREN] provided that he yields me 15 or 30 seconds.

Mr. LUNGREN. Mr. Chairman, first I yield to the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman from California for yielding me this time.

It is a pleasure to work with the gentleman from California again. I am pleased to remember those efforts we had several years ago.

I would just like to mention quickly that the Immigration and Naturalization Service, no matter what we do today, will not be out any money. The Congressional Budget Office estimate suggests they will recover from their fees all of their costs plus they can handle some of their own overhead. The only costs we are talking about, and then they are somewhat speculative, are those costs involved in social programs, a lot of which have already been appropriated for.

Mr. LUNGREN. Mr. Chairman, I rise in support of this bill and to assure my colleagues on my side of the aisle that this is not an indication that I have joined Jesse Jackson's Rainbow Coalition. I have not become a liberal. I am still a card-carrying conservative and I think a realistic analysis of this situation would suggest that conservatives can very confidently and strongly support this bill.

Second, I would say that I hope we are not rewarding procrastination because if so, the Congress would obviously be part of this bill. I cannot think of another group of people in America, legal or illegal, who procrastinate more than we do in dealing with the budget, in dealing with the world's problems, in dealing with immigration. It took us well over a generation to pass the bill that we passed just a couple of years ago. It seems to me we ought to be proud of what we accomplished. Many Congresses resisted the opportunity, or the challenge of dealing with a tough issue like immigra-

tion. Successive Congresses did so during my 10 years here.

Finally, in the last Congress we saw fit to actually do something. I think it is something we ought to be proud of. We ought not get up here on the floor and apologize that we put together a comprehensive complex package that included employer sanctions and legalization. We thought it was the right thing to do. It came after much debate. It came after many different proposals were brought forward. But we felt as a matter of national policy it was important for us to establish a legalization policy in part because it was important for us to take a number of people out from under the shadows of illegality, not only for their good but because of the good for all of society. We thought that was a good and correct thing to do.

The question is, Are we going to achieve our aims? There is admittedly up to 1 million or more illegal aliens who would be eligible for the program who have not come forth to be participants. I cannot tell my colleagues why. I can only tell my colleagues that those are the facts. We do know that the program started slowly. Not because of anything the INS did not do, because they did a magnificent job. If more agencies performed up to the measure that the INS did over the last year and a half, we would have a better Federal Establishment.

Outside organizations have helped mightily but they were very slow to get organized and come out there. People did not have the confidence to come forward for any number of reasons. Included among these were some of the false prophets out there who wanted to show that this program would not work and that Congress was not serious, and that this Nation was not generous. The fact of the matter is there is a large number of people who are eligible who we wanted to be eligible under the terms of our program who have not come forward.

This bill does nothing to increase the pool of eligibles. This bill only says, "Let us expand the application period so that we take care of the situation that we are concerned about." That is all it does. It does not reward law breaking as someone has said. It says the application period shall be extended so that we can gather up those applications in this period of time. No one, not even the INS says that everyone who is eligible has come forward. They will give us some figure, and I do not know how accurate it is because no one knows how accurate it is since we are still dealing in the area of guesstimates. But the fact of the matter is this bill brings us back to the House position. We thought through much debate, much consideration, much compromise in the House that 18 months was the period necessary to work the application period. We only gave up in the conference because we needed to move to final passage of the bill in the conference. It did not mean that we thought that the House position was no longer correct. In fact we are taking us back to the House position that we had before—which was 18 months as a reasonable period to take care of the application process.

This is one of the most complex bills we have ever had to implement. The INS has done a magnificent job but more needs to be done.

I would just ask the Members what they are going to do 2 years from now or 3 years from now when people come forward and say that there are 1 million people or more who were eligible, but who for one reason or another did not apply. How long are we going to let them wait?

I know some who have been against legalization from the beginning who are saying that we are going to vote it down again at that time, and I do not know whether we will do that or not. It seems to me now is the time that we ought to deal with the question, not wait until later on. Remember, it does not add a single person to the eligible pool. All it does is give them a longer period of time, coterminous with the time we give for people in the agricultural worker program.

We voted on that. I suppose in some ways if we said we are just extending this for the agricultural producers of America, we might have an easier time to get it through. I say to my friend the gentleman from Kentucky [Mr. ROGERS] that if this was for the tobacco growers, maybe we could do that. Let us go ahead with this program. It makes good sense. It is not procrastination. It is just good sense. It is a humane approach to a difficult problem.

Mr. MAZZOLI. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker, having resumed the chair, Mr. DONNELLY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4222) to amend the Immigration and Nationality Act to extend for 6 months the application period under the legalization program, had come to no resolution thereon.

APPOINTMENT OF CONFEREES ON HOUSE CONCURRENT RESOLUTION 268, BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEARS 1989, 1990, AND 1991

The SPEAKER. The Chair appoints the following Members as managers on the part of the House for the conference on House Concurrent Resolution 268 and the Senate amendment thereto:

Messrs. GRAY of Pennsylvania, FOLEY, LOWRY of Washington, WILLIAMS, FROST, SCHUMER, SLATTERY, ATKINS, GUARINI, DURBIN, LATTA, GRADISON, GOODLING, DENNY SMITH, EDWARDS of Oklahoma, THOMAS of California, and ROGERS.

IMMIGRATION AND NATIONALITY ACT

The SPEAKER. Pursuant to House Resolution 428 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4222.

□ 1430

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4222) to amend the Immigration and Nationality Act to extend for 6 months the application period under the legalization program with Mr. DONNELLY in the chair.

The CHAIRMAN. The gentleman from Georgia [Mr. SWINDALL] has 15 minutes remaining, and the gentleman from Kentucky [Mr. MAZZOLI] has 5½ minutes remaining for general debate.

The Chair recognizes the gentleman from Georgia [Mr. SWINDALL].

Mr. SWINDALL. Mr. Chairman, I yield 3 minutes to the gentleman from Kentucky [Mr. ROGERS], the ranking member of the Commerce, Justice, State, and Judiciary Subcommittee of the full Committee on Appropriations, which has jurisdiction over immigration.

Mr. ROGERS. Mr. Chairman, I thank my colleague for yielding me this time.

I will be brief because my time is short. Our subcommittee is desperate for funds for the war on drugs, for the FBI, the DEA, and all those functions of justice on the war on drugs and crime, and any moneys that you spend needlessly in INS comes out of the war on drugs. I want to emphasize that to everyone, but I come to this issue on a much more broad front.

Mr. Chairman, there are many people who are providing some myths that I think we need to dispel here. For example, there is a myth that there has not been enough time for aliens to file their papers. Mr. Chairman, there has not been a single study that can be quoted that says that the reason people have not applied is because they do not know about the program, or the possibilities, or that they need more time to study it. They have had all of the time in the world. The INS has bent over backward to be liberal in that time period, and no one can say that they are not applying because of a lack of time. There are no

studies to that effect, so the lack of time is not the problem. And yet that is the function of this bill, to extend that deadline. No one can point to a study that says that anyone needs more time to study whether or not they need to apply.

The number of people that have applied of course is in dispute, and the number of people is somewhat in dispute, but I think we can say that practically everyone now has made their application that wants to extend the program. Now we will remove the major motivation for applying while at the same time causing the offices to remain open, 100 offices with no applications or few in the process at the time the bill runs at 700 a month. This money comes from the war on drugs, so no one can say they need more time because that is the reason they have not applied. There have been 20 months since the date the bill was passed until the May 4 deadline coming up, and applications are coming in well now because of the deadline approaching. You remove the deadline and the applications will slow or stop.

Myth No. 2: We need more time to publicize the legalization process. My colleagues, this has been on the front pages, as you know, when the bill was passed and debated not only in this country, but in Mexico and the other countries of Latin America. The INS has spent $7 million in multimedia campaign advertising, and they have been successful. Surveys show that 95 percent of the people are aware of the deadline and of the process. More time is not the remedy for procrastination. Otherwise we would extend the April 15 deadline for paying taxes.

Mr. Chairman, motivation is the key at this time. The rumor of an extension of the deadline sends a signal that, if you wait, they may come up with a better rule for the benefits, so hang in there, and do not file the application.

I say to my colleagues, please vote down this bill.

Mr. SWINDALL. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MOORHEAD], a member of the full committee.

Mr. MOORHEAD. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in opposition to H.R. 4222, which would extend the legalization application deadline from May 4, 1988 to November 30, 1988.

The bill before us raises questions of fairness and equity. In granting amnesty, Congress gave an opportunity of a lifetime to a particular group of aliens. Such an opportunity was indeed a precious gift especially because this group got a better deal than other aliens who waited patiently in the legal immigration line. The proposed extension adds insult to injury for law-abiding legal immigrants and sends the message that the quickest way to get legal residency is through illegal entry.

In devising the legalization program, Congress intended it to be a one-time-only benefit as part of a carefully orchestrated solution to our country's illegal immigration problems. Many Members, at the time, expressed reservations about the pressures we eventually would face to extend and expand legalization. If Congress had wanted an extended program, it would not have been so specific in mandating timetables and deadlines.

Mr. Chairman, if we pass this legislation we will upset the framework of Public Law 99-603, a hard-won package of compromises and delicately balanced solutions. Passage of H.R. 4222 also will invite other groups with similar requests to make their cases before Congress and undermine the credibility of the Federal Government's resolve to deter and control illegal immigration.

The Immigration Reform and Control Act mandated that the legalization program be self-funding. But passage of this measure will cost the American taxpayers around $53 million. According to INS, total fee receipts from the temporary resident application phase should be sufficient to cover program costs. In fact INS anticipates that, by May 4, approximately 1.35 million I-687 forms will have been received raising an estimated $208 to $240 million. At least 330,000 additional applications and accompanying fees will be needed to pay for the 6-month—actually it is closer to a 7-month—extension. INS doubts this will occur.

In addition, H.R. 4222 is unnecessary because INS has already instituted a simplified filing policy. Under the new rules, all remaining eligible aliens need only to fill out a form, sign it, and pay the fee. They will have up to 60 days after the May 4 deadline to submit the necessary documentation.

Finally, in closing, I must emphasize my particular concern about the effect this bill may have on our enforcement efforts at the border. Without sufficient funds generated from filing fees to carry the legalization program through November of this year, resources will be taken from other vital areas, such as enforcement, to pay for the extension.

INS has been very fair and accommodating in its implementation of the legalization program. H.R. 4222 is costly, unwise, and unnecessary. It undermines existing law and compromises congressional intent. I urge a "no" vote.

Mr. SWINDALL. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. GEKAS], a member of the full committee.

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, what is an illegal alien? In the best sense of the definition that illegal alien is an individual who would risk life and limb to come into the United States where, no matter what the risks are and what the dangers are of being deported or arrested, it would be much better for an individual to be in the United States as an illegal alien than anywhere else in the world. And that is a compliment to us, and we want to foster that feeling forever, as long as our country remains as it is.

But at the same time, that recognition on the part of people all across the world that the United States is an easy place to invade, to get into, to find loopholes within which they can rush into our country; that also leaves that great big doorway open for those who would do us ill, to spies, to saboteurs, to terrorists, to all those who would do anything they could on behalf of their own allegations to destroy our country.

So, Mr. Chairman, we must as a first order of business for our own national security close off our borders. We are willing to grant amnesty, and we have. We voted to do so for those who yearn to be American citizens and who want to remain here as part of us, our whole fiber, but at the same time we owe it to our citizens to clamp down this door once and for all and not extend for one more day to prevent the deterioration of our borders and the hurt to our security.

That is why an extension is harmful to us not to close off amnesty. We have and we are willing to give amnesty, but to preserve our own national security.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Chairman, I rise in strong support of H.R. 4222, which will extend the deadline for submission of immigration amnesty applications from May 4, 1988, to November 30, 1988.

While I would have preferred the 1-year extension proposed by Congressman SCHUMER in H.R. 3816, which I have cosponsored, I want to express my thanks to the Judiciary Committee for moving expeditiously on the 7-month extension contained in H.R. 4222. If enacted this bill would make November 30, 1988, the deadline for submission of both amnesty and special agricultural worker applications.

Currently the Immigration and Naturalization Service has received over 1.2 million applications for the amnesty program set up in the Immigration Reform and Control Act of 1986. A final total near 1.4 million is expected by the May 4 deadline. While that is a

substantial number there is a general consensus that up to 2 million individuals are eligible for amnesty, meaning that 600,000 aliens will miss the filing deadline. There is also an estimate by the Carnegie Endowment for International Peace that up to 1 million aliens who are otherwise eligible will miss the May 4 deadline.

To carry out the intent of Congress and the President in establishing the Immigration Reform and Control Act and for reasons of basic fairness I believe an extension of the amnesty deadline is justified.

Very frankly, it has taken the Immigration and Naturalization Service most of the 1-year application period to get its amnesty processing apparatus up to speed. Most of the 100 offices were slow to get started after May 4, 1987, and INS personnel had to gain on-the-job experience in administering a complex new law, one calling for difficult judgments on thousands of applications. Also, the new duties of INS employees under the law are quite different from previous responsibilities—basic attitudes about aliens had to be changed among agency personnel. The agency has come a long way in the past 11 months, but longstanding INS views on aliens have worked against an efficient legalization process.

Applications were slow to arrive during the initial months of the program as applicants and those groups assisting them in compiling documentation for the applications waded through the complex new rules for amnesty. In most cases it has been very difficult to gather adequate evidence to support an application. Rent receipts, pay records and other material proving that an alien has been in the United States since before January 1, 1982, had to be obtained and verified before an application was submitted.

And when these applications have finally been transferred to the INS the Service has been slow to process them. The original goal was to process applications in 6 to 8 weeks, but delays of up to 6 months have been reported for some of the first applications filed. Currently the Service has finished processing about 50 percent of the applications received, yet in the beginning months of the 1-year application period the rate of approval or disapproval was much smaller.

There has also been substantial confusion about the amnesty program, a situation aggravated by an inadequate and ineffective public information program. By most accounts the Service has done a poor job of using national and local media to explain the program and to encourage people to apply for amnesty. This has resulted in confusion and misunderstanding about legalization opportunities.

The problem has been compounded by a basic mistrust of the INS by those who should be applying for amnesty. The adversarial relationship between the INS and aliens that stretches back for decades has made it very difficult for applicants to present themselves to agency officers with applications containing extensive personal information.

The slow rate at which the INS has been approving amnesty applications has fed into this problem of mistrust. As applications are approved the word-of-mouth message about the amnesty program becomes more favorable. The delay in applications processed meant that suspicions were not alleviated in the community by those who had successfully applied. With an extra 7 months the increasingly efficient processing being done by the INS and the accompanying positive word-of-mouth reports should result in a substantial number of new applications.

Because of the complexity of the new immigration law, difficulties faced by the INS in setting up their legalization operations, the lack of an adequate public information campaign and a basic mistrust between the INS and those who were to benefit from amnesty, the program did not exactly hit the ground running in May of 1987. Just when the program is running more smoothly an arbitrary deadline is nearing which will leave up to 600,000 people without an opportunity to apply for legalization.

The clear intent of the 1986 immigration reform bill was to legalize those aliens who have resided in the United States for a number of years: those who have made a commitment to this country, who have worked in and contributed to American businesses, who perhaps have raised a family here and whose children are now citizens in their own right. It is unfair to take away an opportunity to eventually become a U.S. citizen simply to meet an arbitrary deadline. No one in the Congress or the executive branch could have foreseen the difficulties presented by the implementation of the amnesty program when it was being drafted. If we had a longer amnesty application period surely would have been provided.

Today we have an opportunity to make a rather simple adjustment which will add a modest amount of time to the application period. Such a move will improve the program and ensure that its original goals are fulfilled.

I strongly urge Members to support this extension of the deadline to preserve the fairness of the program and as a reaffirmation of the principles of the Immigration Reform and Control Act.

□ 1640

Mr. SWINDALL. Mr. Chairman, I yield 1½ minutes to the gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Chairman, I rise in strong opposition to H.R. 4222.

Mr. Chairman, extending the deadline by which illegal aliens may apply for amnesty in the United States is unfair and counterproductive. It makes for bad law and bad public policy.

The most obvious reason is that an extension is unwarranted. Nearly 1.5 million aliens have applied for legalization so far, and the number applying to do so grows greater by the day. In the week ending March 29, there were more than 40,000 applications made—nearly quadrupling the rate of applications since January. I might add that this is exactly what we should expect from past experience with anmesty programs. In Canada, where a similar immigration law was implemented recently, 10 percent of the eligible aliens applied for amnesty on the last day of the program. Surveys show that most eligible aliens who haven't already applied for amnesty in the United States plan to do so before the May 4 deadline. Indeed, a comprehensive report on the amnesty program, released last February by the Carnegie Endowment for International Peace, opposed extending the amnesty deadline for these reasons.

If anything, delaying the deadline for 6 months, as H.R. 4222 would have us do, adds unnecessary and even debilitating confusion to the amnesty process. The success of the amnesty campaign depends on its ability to create a sense of urgency. Millions of dollars and thousands of INS officers, church leaders, and other community volunteers are enlisted in this campaign with the understanding that amnesty will end on May 4. They are bombarding every major U.S. metropolitan area in 48 different languages with a single message: "Don't be left behind." H.R. 4222 directly contravenes this logic by replacing urgency with ambiguity. Stripped of the incentive to apply immediately, would-be applicants are left to wonder whether Congress will simply extend the deadline again this November, just as H.R. 4222 would have us do now. Then again, what if H.R. 4222 is approved, only to be defeated in the other body or vetoed by the President? It would be hard to imagine a more confusing signal we could send to those men and women who might otherwise step forward and be counted.

Which leads me to the second reason to oppose H.R. 4222: compassion. We've heard a great deal about compassion during this debate and, at first glance, passing H.R. 4222 may seem like the compassionate thing to do. But just how compassionate is it?

We've already seen that the vast majority of eligible aliens are aware of the amnesty program and have either been legalized or plan to go through the process, and that confusing them with mixed signals from Congress would be unconscionable. For those who miss the May 4 cutoff, the INS has agreed to a new "simplified filing policy" which allows 60 extra days to file. All they have to do is fill out a form, sign it and pay a fee. In the same spirit, the INS has remained flexible about the documentation it will accept to prove continuous residency.

Most important, the May 4 deadline won't be used to break up families. The INS has already ruled that minor children and spouses of legalized aliens won't be deported. Other nonqualifying immediate family members are being handled on a case-by-case basis.

Having recognized these facts, it's clear that passing H.R. 4222 has nothing to do with whether we have compassion for illegal aliens, for clearly we do. The real question is, what happens to the thousands of other foreign citizens who are not eligible for amnesty but are attempting to obtain permanent U.S. residency or become U.S. citizens by other legal means? These individuals deserve our compassion, too.

There is also the cost-benefit analysis. According to the Congressional Budget Office, extending the amnesty deadline by 6 months would result in no more than 100,000 additional applications. That's barely 8 percent of the total number of men and women who are expected to come forward by May 4. However, the cost of extension would be enormous. CBO estimates that delaying the deadline by only 6 months would add $123 million to Federal budget deficit between now and 1993. That's well over $1,000 of taxpayer money spent for every applicant!

Amazingly, the majority included these statistics in the full committee report, then argued that the cost of a 6-month extension was insignificant. With all due respect, a $123 million price tag for an incremental gain is by no means a defensible position, particularly in light of current budget constraints. This is clearly a case where the law of diminishing returns is starting to take effect. Yet the majority refuses to acknowledge this. Using their logic, Congress should spend $1 billion to extend amnesty until the year 2000 and beyond on the theory that there will always be a relative handful of people who may some day wish to obtain amnesty but just haven't gotten around to it yet. As Congress recognized when it passed the Immigration Reform Act in 1986, there comes a point where the Government and the taxpayers have done their share and the responsibility shifts to the eligible aliens. We must make them aware of the amnesty program, and we have. But in the end, the decision whether to apply is strictly their own.

Finally, H.R. 4222 is a breach of faith that threatens future immigration reform initiatives. The Immigration Reform and Control Act of 1986 was years in the making, as most Members in this and the other body will attest. Previously, major immigration bills were introduced in each successive Congress, only to go down in flames or simply to languish, unheard and unread, in committee.

When the Immigration Act finally materialized in the fall of 1986, it was not without tradeoffs or political bloodletting. More importantly, the bill's passage into law raised public expectations that Congress was finally going to bite the bullet and get on with the business of serious immigration reform.

For that reason, many critics of the 1986 act—and I count myself among them—vowed to support the new law even though it failed to do many things we wanted with respect to employer sanctions, paperwork requirements, and so forth. Thus, it is not to be taken lightly that Congress agreed 2 years ago that the Amnesty Program should last until May 4, 1988, and that, thereafter, it should expire. I particularly object that H.R. 4222 is now being labeled a compromise because it extends the May 4 deadline for 6 months instead of a full year, as the gentleman from New York [Mr. SCHUMER] originally intended. In fact, the only thing H.R. 4222 compromises is the delicate consensus that made immigration reform possible 2 years ago.

Mr. Chairman, H.R. 4222 betrays its intended purpose: to encourage eligible illegal aliens to step forward. Whatever its good intentions, this is seat-of-the-pants policymaking, and it shows. It should be opposed on its merits—or rather, its lack of them.

Mr. SWINDALL. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. MCCOLLUM], a member of the subcommittee.

Mr. MCCOLLUM. Mr. Chairman, I was not one who supported amnesty or legalization, as we call it. In fact, I still believe it was the wrong policy. But I have worked very hard to help the Immigration and Naturalization Service to inform the public, to inform those who are out in the field who might be eligible for this program, and I deeply believe that that message has been out there, that the time has passed and that indeed members of the community who are in this status eligible to become legalized have gotten the word. The only question is whether they are still waiting for some reason technically to be able to come forward to do these things.

The Immigration Service the other day extended a helping hand when they made the decision that a person does not have to have all of his paperwork in to prove eligibility, all they have to do is spend about 30 minutes before May 4 and to come to an Immigration Office or through one of the helping hand arms of the Immigration Office and make the formal application, and then they will have time to present the additional information they need. Every possible step has been taken. Everything has been done in order to allow people to know that they are indeed eligible and that they can have amnesty under this program.

It is my belief that a deadline is a deadline. We are going to have a big rush at the end. It is just like income tax day. We need to put an end to it, it is fini, it is May 4 and it ought to stay there. If we do not do that, we are going to have the same effect we have with the general idea of putting aside this whole proposition and granting amnesty in the first place, we will be holding out that arm that we are going to give amnesty again, and we are not going to extend it just one time, but it will be extended many more times. It is a slap in the face to those people who stand in line to come into this country by the thousands legally. But not only that, it is an additional magnet to those who would come over illegally in the hopes that they will still have an opportunity to apply.

It is also an additional problem if we grant this extension and then the President vetoes this bill, which I think he is going to do if we pass it, because there are going to be some people out there holding the bag who think because this legislation is passed by the House that they have the opportunity to have a little longer to think about this, and that is not fair to them. It is not right. The whole process is wrong, and I urge my colleagues to vote now against this extension.

Mr. SWINDALL. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SLAUGHTER], a member of the subcommittee.

Mr. SLAUGHTER of Virginia. Mr. Chairman, I believe an amnesty extension would encourage more illegal immigration by causing people to think that the United States will continue to make exceptions and allow illegals to stay indefinitely. There will be no real fear of deportation. Illegal aliens will continue to procrastinate and take advantage of the inconsistency in our immigration policy.

The United States attracts thousands of illegal immigrants. Extending the deadline for amnesty will increase the uncontrollable flow of illegals into

the country. Despite the employer sanctions provisions now in effect, our inconsistent immigration policy will entice illegal aliens to continue to flock to the United States.

An extension will be an affront to the thousands of immigrants waiting in line to become citizens of the United States. Those who have been patiently waiting and following established immigration procedures will simply be pushed aside because of an arbitrary decision to allow those here before 1982 to be come legal. In addition, it would be a reward for those who are not only illegal, but also balked at their opporuntity to utilize the amnesty program by failing to act before the May 4, 1988, expiration of this program.

If we are going to extend the time period for admission of illegal aliens, then when will we stop granting such extensions? If extensions are warranted today, won't there be ample justification for extensions 6 months hence?

I believe that the United States must have a stable and consistent immigration policy. It should stick to its policy and show potential immigrants that the United States has a definite and detailed procedure to follow if a person desires to become a U.S. citizen.

I urge my colleagues in the House to defeat this bill.

Mr. MAZZOLI. Mr. Chairman, I yield 1 minute to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, I just have 2 points to make.

First of all, I urge anybody listening to call the INS Office in Arlington, VA, right now and find out what response they will get. They will either get one of two responses. One, they will get a recording, or they will get a busy signal.

I am not here to trash the INS because many men and women are committed and have worked and worked hard on this program. But there simply are not enough resources or enough public education.

But I invite anybody to try that and they will see why many people coming in the shadows are having problems.

Second, I say to my colleagues we have the INS, the agency being the agent for people to come in. This has been the agency that has busted many of these men and women in the past, and they see the Government embodied by the INS. Take a Salvadoran. Their only thought of their government has been repression.

Given time, this is the right thing to do.

I. NUMBERS OF ALIENS WHO HAVE NOT APPLIED

Original Immigration and Naturalization Service estimates suggested that between 2 and 4 million persons would qualify for legalization under the new amnesty program.

As of March 1, 1988, only 1.2 million persons have applied for amnesty.

Without an extension, a minimum of 500,000 to 2.7 million eligible persons will not apply before the May 4 deadline.

II. REASONS FOR LOW TURNOUT

There is a widespread consensus that INS has failed to provide sufficient education to aliens on specific issues such as family unity and documentation. INS has failed to utilize community networks, immigrant organizations, and ethnic groups to help educate aliens.

There are thousands of aliens who are currently awaiting court decisions that may allow them to qualify for legalization. Most of these decisions will not be resolved until after the May 4 deadline.

Many persons simply cannot afford to pay the application fees, others remained skeptical of the new amnesty program and were extremely slow in applying and my not be able to complete applications, collect required documents, obtain medical exams, and pay fees by May 4.

III. AMNESTY EXTENSION WOULD SOLVE MANY PROBLEMS

The extension provided in H.R. 4222 would allow time for new public education initiatives to penetrate the undocumented alien community.

The extension would allow time for court decisions affecting eligibility to be resolved with sufficient time for those affected to apply.

The extension would allow time for persons to save money and collect all the required documents.

The extension would not expand eligibility beyond the original intent of Congress, it would imply allow time for the remaining 1 to 3 million aliens to apply for legalization.

IV. SUPPORT GROUPS

H.R. 4222 has widespread support from diverse organizations throughout the Nation. The following organizations are just a few that have pledged their support for H.R. 4222:

The U.S. Catholic Conference, American Civil Liberties Union, American Council of Nationalities Service, American Immigration Lawyers' Association, AFL-CIO, National Council of La Raza, Hispanic National Bar Association, Mexican American Legal Defense, and Education Fund.

Mr. SWINDALL. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. SHAW], a member of the full committee.

Mr. SHAW. Mr. Chairman, I thank the gentleman for yielding me this time. I will try not to use the full 2 minutes. I think everything has just about been said now that can be said with regard to this particular bill.

I would like, however, the Members to think for just 1 moment, and I am going to be speaking against the bill and in favor of two amendments that are to be forthcoming, about what we are doing here. It has been the law for over a year now that the deadline was May 4. Sure, there were some startup problems, but what the present law says is if someone's application is in by May 4, they are OK.

There is no bill presently moving in the Senate, even though they have had a hearing or so. There is no bill that has been scheduled for floor action over in the Senate.

Also, it is questionable as to whether the President would sign such a bill. The cruelest thing this Congress could possibly do is to create an atmosphere so that those who were prepared to file by May 4 would get the impression in listening to this Congress, and they would definitely have grounds to get this impression, that the deadline was going to be extended. If they do not come forward by the deadline, they are going to then be precluded from filing, and this is what I think we must talk about.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield for just a second?

Mr. SHAW. I yield briefly to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I would just want the gentleman to verify what he heard at the full committee, and that is each one of us working with this bill did admonish everyone in the audience and everybody watching that they had better be sure to sign up by May 4 because there were no guarantees that this bill would pass.

Mr. SHAW. I understand what the gentleman is saying and he is absolutely correct.

But what is going to be news is what comes out of the floor action today and what they are going to hear is what action the House of Representatives took today. A lot of these people are confused anyway because of the fact that this is being allowed, and they are suspicious and everything else, and for us to change the rules at this point I think would be extraordinarily cruel and would defeat the purpose the proponents are trying to effect.

Mr. MAZZOLI. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Mr. Chairman, I rise obviously in support of H.R. 4222.

Let me just say to my colleagues on the other side of the aisle, after we finish with the amnesty portion of this bill the rest of it is downhill for many people. Employer sanctions will now take over. So if there was anything positive that came out of the Immigration Reform Act, it was this portion.

Let us say every one of my colleagues who has spoken against this amendment is absolutely right, and let us say everything they have said was correct, and then let us say if we going to err, why is it not possible that we as a legislative body, as a God-fearing body, why can we not err on the side of those human beings who are truly looking and fearing and needing the additional time to come forward. Why can we not show that humaneness?

It seems to me that as far as those of my colleagues are concerned, we have

debated this bill all over again. I want them to know that there is no question in my mind that the Immigration Service in the last 4 or 5 months has tried to do, and they have done an outstanding job. But the first 6 months were horrendous, and in only the last month or 2 have we seen the poster saying, "Come forward."

The community I represent has a large bilingual population, and I can assure my colleagues that we knew nothing, there was nothing coming into our community. For some of my colleagues who represent rural areas, who have no immigration problems, I can understand them coming forward and saying if they did not do it by such and such a time it is their fault. Trust me, the message never got out.

The interesting thing about all of this is that even if we do not pass this, the INS has said that they are going to give some additional time. I would hope that my colleagues would rethink their position.

Mr. Chairman, I rise in strong support of H.R. 4222 to extend the immigration legalization program for an additional 7 months. Last July, several members of the Congressional Hispanic Caucus and I held a press conference in which we documented the enormous problems that confronted the startup of the legalization program. When Congress passed the Immigration Reform and Control Act in late 1986, it gave an overburdened agency an almost impossible task. The INS has a mere 6 months to develop and implement the massive legislation program.

And the lack of time took its toll. Necessary forms were not received in many Legalization Offices and Qualified Designated Entities until well after the May 5 commencement of the program last year. Complex and stringent application requirements made the process unusually time-consuming and complicated. Moreover, the INS had to overcome years of fear and mistrust on the part of undocumented aliens who have lived for years on the fringes of American society. Yet the massive public information campaign needed to make the legalization program a success did not get underway until after the program was nearly 4 months old.

Since that time however, the INS and in particular some of its regional offices, has made a valiant effort to ensure the success of the legalization program. The INS has made considerable improvements in the public information campaign and some concessions have been made on paperwork requirements. Nearly 1½ million people have applied for legalization. Yet there are many areas where legalization has not been a success and many people who are eligible have not applied. For example, New York City has an estimated eligible alien population of half a million to a million people yet only 85,000 have applied thus far. This extension will allow the INS and local agencies to develop a more effective public education campaign for the vast multiethnic population of the city.

The bill simply reflects reality. It took a long time to implement the legalization program and it was anything but smooth. We cannot penalize eligible aliens for what was obviously the Government's fault. It is only fair to give aliens who, for a variety of reasons, are unable to apply before the May 4 deadline an opportunity to become legalized. I commend the sponsors of this bill, Representative MAZZOLI and Representative SCHUMER, for bringing this bill to the floor so quickly. This is a fair and just measure that deserves approval. Thank you very much.

The CHAIRMAN. The gentleman from Georgia [Mr. SWINDALL] has 30 seconds remaining.

□ 1655

Mr. SWINDALL. Mr. Chairman, I yield myself the balance of my time.

Very briefly, Mr. Chairman, I would like to state that these charts—they say pictures are worth a thousand words. I hope that works in my 30 seconds.

Very briefly, Mr. Chairman, I would like to state that these charts rebut a number of the arguments that have been made. One is the INS estimates have virtually been matched. This chart clearly demonstrates that. Second, it is obvious that we are dealing with procrastination, not lack of knowledge. The Commissioner stated 96 percent awareness. This last chart shows that there is in fact now the influx that one would expect as that timeframe draws near, the May 4 deadline.

Last point, a number of people have said this thing is not going to cost any money. CBO says it will add $123 million to the deficit. The means the money has not been appropriated. It will add it to the deficit.

The CHAIRMAN. The gentleman from Kentucky [Mr. MAZZOLI] has 30 seconds remaining.

Mr. MAZZOLI. I yield myself such time as I might consume of that 30 seconds.

Mr. Chairman, just a couple of brief points.

I think the charts are somewhat misleading because they use a Carnegie Institute figure of 1.5 million prospective applicants. The more recent figure of Carnegie is 1.8 million to 2.5 million.

Furthermore there is a $27 million surplus or benefit in the INS coffers in March from the legalization program which could easily take in some of the additional cost.

Furthermore the CBO estimate that we are using shows if this program were extended there would be no net cost to the Immigration Service because they would pay the cost from the fees received.

Ms. PELOSI. Mr. Chairman, today the House will make a decision which is crucial to millions of undocumented workers in the United States.

In 1986, Congress agreed that immigration reform was urgently needed and passed the Immigration Reform and Control Act. An integral part of this reform was to offer citizenship to the almost 4 million undocumented immigrants who had entered the United States prior to January 1, 1982, and fulfilled certain other criteria.

Unfortunately, a number of factors have hampered the amnesty program. There are several reasons for this poor showing. Confusion about eligibility and the application process has been only partially counteracted by INS education and outreach programs. The cost to the applicants of the legalization process has put the program out of reach for many undocumented immigrants. And fear of the Immigration and Naturalization Service has been widespread, becoming a key reason for the poor turnout of those who are eligible for amnesty.

Only about 1 million people have applied for legalization. Three quarters of the undocumented immigrants in the United States have not taken advantage of the opportunity to apply for legalization. We have begun to solve these problems but more time is needed. Without an extension of the amnesty deadline, the majority of eligible immigrants will miss out on the opportunity to gain legal resident status. This would greatly reduce the intended impact of the Immigration Reform and Control Act of 1986.

I urge my colleagues to vote in favor of the amnesty extension and, in so doing, show their support of the Immigration Reform and Control Act of 1986.

Mr. RANGEL. Mr. Chairman, I rise today in strong support of H.R. 4222, a bill to extend the amnesty program for illegal aliens. Without the extension, a main purpose of the legalization program, promoting the efficacy of our society's legal system will be undermined. Furthermore, without the extension, the implementation of the amnesty program in a manner that comports with fundamental fairness will also be undermined.

One of the main intentions of Congress in enacting the legalization program was resolving the problem of a large group of people residing in the shadows of society to seek help when their rights are violated. Resolution of this problem requires maximization of the number of aliens who are legalized. As of April 8, 1988, only 1.3 million persons of the intended 4 million persons have applied. In New York City, it is estimated that only 20 to 30 percent of eligible applicants will have applied for legalization by the time the 1-year period ends on May 4, 1988. This low turnout rate is certainly unacceptable. In order to protect and uphold the dignity and authority of our legal system, extension of the amnesty program seems a very small price to pay.

In addition, there have been many problems to date with the application procedure that have seriously compromised the fairness of the implementation of the legalization program.

Until the last 2 months, public education and outreach campaigns have been severely delayed. For example, in New York City, radio advertisements explaining the legalization process were broadcast only in English on New York radio stations until August, 6 months after the amnesty year began. While the Immigration and Naturalization Service should be commended for its recent cam-

paigns, they come too late in the application process, and it is unlikely that its messages will reach all potential applicants in time.

Another problem which has undermined the fairness of the application procedure has been the regulatory changes midway through the application that have caused confusion regarding eligibility requirements. Many individuals who previously were informed that they would not qualify for legalization are now eligible. More time, therefore, is necessary to inform and convince all those people are now eligible.

In sum, it is important that we realize that it takes a vast amount of time and effort to penetrate the thousands of alien enclaves. Some, daunted by language, have hung back. Others simply do not understand the new law. Many fear, incorrectly, that if one family is eligible for amnesty, another could be deported based on the information on the application form. There must be more time for accurate information to be disseminated and digested, and for understanding and trust to develop.

Mrs. COLLINS. Mr. Chairman, I rise in support of H.R. 4222, to extend the amnesty period for illegal aliens until November 30, 1988. This is a modest proposal, which provides a prudent approach to helping ensure the success of the 1986 immigration reform law.

Despite the enormous success of the amnesty program to date, it has become clear that thousands of aliens in the United States will remain unregistered, despite their qualifications for amnesty under the new immigration laws. Delays in implementing the current education and outreach campaign, confusion regarding eligibility, an ingrained fear among illegal aliens toward the Immigration and Naturalization Service [INS], and costs of applying for amnesty have all meant that up to 2.7 million people may miss the filing deadline and fail to acquire legal status—almost double the number of applications to date.

Unless most eligible illegal aliens take advantage of the amnesty program and acquire legal status, the employer sanctions placed under the immigration laws will be impossible to implement. Unfortunately, the INS campaign for the amnesty law has come too late to reach all potential applicants in time.

I have received numerous requests from interested parties in my district concerning this matter. Clearly, the need for an extension is pressing and immediate. In passing the immigration reform law, Congress clearly intended to legalize those aliens eligible for the amnesty program.

Those opposed to extending the amnesty deadline have argued that it would entail increased Government expenditures. The Congressional Budget Office has estimated that the net effect of this measure would be a slight decrease in the deficit in fiscal year 1988, and would reduce Federal outlays in fiscal year 1992 by $126 million. The savings associated with effectively controlling our Nation's illegal immigration problem would, in other words, offset any additional costs resulting from the extension.

Extending the application period will help guarantee that those illegal aliens eligible for legalization will come forward. It will help eliminate the problem of a "shadow" population in our country, one that exists without being recognized, reaps the benefits of American society without paying its fair share, and is increasingly vulnerable to exploitation. I urge my colleagues to support this measure, and to oppose any weakening amendments.

Mr. WEISS. Mr. Chairman, I rise in strong support of H.R. 4222, a bill to extend the deadline for applying for legalization under the Immigration Reform and Control Act of 1986 to November 30, 1988. The extension is a necessary and fair proposal to allow those who are eligible to apply for amnesty to have a reasonable time period in which to do so.

The Immigration Reform and Control Act of 1986 provided that aliens who entered the United States prior to 1982, and who met certain conditions, would be permitted to apply for legal resident status within a year from the beginning of the program. With less than a month remaining in the amnesty period, it is apparent that applications will fall far below the level projected when the Immigration Reform and Control Act was enacted. Of the estimated 3.9 million persons who might be eligible, fewer than 1.2 million persons have applied.

In New York City alone, at least 200,000 undocumented aliens are eligible for amnesty, according to conservative estimates. Yet at the current application rate, only one-quarter of that population will be legalized by May 4, when the current amnesty program is scheduled to end.

The reasons for this disappointingly low turnout are many. Logistical delays hampered the initial stages of the program. Public information and outreach programs did not gain momentum until much of the amnesty period had elapsed. There has been a lot of confusion about who is eligible to apply—confusion which has only increased with recent changes in the eligibility rules.

Beyond all the technical problems, a principal obstacle is the ingrained fear and distrust of the Immigration and Naturalization Service by illegal aliens. Those persons who have hidden from the INS in the past must be persuaded that applying for legal status will not automatically lead to deportation. It will take time and more vigorous public education and outreach programs to overcome that fear.

Extending the amnesty program for 6 months is but a first step. After that period has elapsed, if the number of eligible aliens who have not yet applied for amnesty remains distressingly high, Congress should vote to further extend the application period.

We intended that all aliens eligible apply for legal citizenship under the amnesty program. The bill before us today does not expand legalization, it merely carries out the intent of Congress when it enacted the Immigration Reform and Control Act of 1986.

A failure to extend the legalization period will not only thwart the legislative intent behind that act, it will leave a large residual population of undocumented persons who remain in this country, without access to legal employment, vulnerable to exploitation and poverty. We cannot in good conscience deny those people the freedom to live within the law as full members of this society.

The United States has been a nation of immigrants. Our Nation has made an historic commitment to shelter those fleeing oppression and persecution, those who are seeking a better life for themselves and their families. We must not allow that commitment to be compromised because of bureaucratic inflexibility. Our challenge is to keep the lamp of liberty shining bright, to keep ourselves and our Nation true to America's ideals.

I urge my colleagues to meet that challenge. Vote in favor of this important measure.

Mr. MINETA. Mr. Chairman, I rise in strong support of H.R. 4222, a bill to extend for one additional year the anmesty program approved in the Immigration Reform and Control Act of 1986.

Mr. Chairman, extending the amnesty period is the only sensible thing to do. There are still millions more who qualify for legalization but have not applied—often due to fear, mistrust, or ignorance of the new law. This fear has resulted in a limited response to the amnesty program.

The purpose of this amnesty provision is to give legal status to undocumented aliens who have become part of our society. It is important to grant these undocumented aliens the opportunity to adjust their uncertain status. Let's give this program a chance to work. I urge my colleagues to support this legislation.

Mr. LAGOMARSINO. Mr. Chairman, I rise in operation to House Resolution 4222, the resolution to amend the Immigration and Nationality Act to extend for 6 months the application period under this legalization program. I feel this resolution, if passed, would cause confusion among the potential applicants, raise false hopes that, or course, would be dashed if it doesn't become law, and in addition will cost an estimated $40 million in tax dollars. Due to the slow startup of the legalization portion of the program, I would support a limited extension of 1 to 2 months in length so as to provide additional time in some cases to obtain the necessary documentation and funds needed to submit the legalization applications.

However, H.R. 4222, as written, serves to undermine the intent of Congress, which was to provide a limited "amnesty period" for specific aliens illegally residing in the United States. The bill as written would serve to further confuse these individuals by creating expectations of additional changes or extensions to the legalization program. Finally, the 6 month proposed extension would not increase significantly the number of applications submitted, would significantly increase the cost of the legalization program, and would most likely lead people to believe other extensions might later be given.

Mr. SENSENBRENNER. Unfortunately, we all have lost sight of congressional intent during this debate. We also have lost sight of the premise of the Hesburgh Commission when it recommended granting amnesty as part of an immigration reform package.

Amnesty was to be granted to those, and only those, who had lived in the United States long enough to have built certain equities which would allow forgiveness of their breaking our laws, and to grant legal status to these people. Amnesty was not to be granted with quotas or numerical goals in mind. It wasn't for the first million or 2 million who applied,

and it certainly wasn't to be a universal program for everyone who sneaks across our borders.

The rationale for this legislation is that not enough people have applied, so let's extend the time. The INS is accepting "bare bones" applications. All someone has to do is fill out a simple form and they can supply the documentation later. It can't get any easier.

If Congress was ever serious about regaining control of our borders, now is the time to "bite the bullet." Congress passed legislation and the President signed into law a bill which contained deadlines and restrictions. We are morally obligated to live up to them as well. Shifting dates will create more confusion, not less. Are we to be taken at our word, or will some people think, "Well Congress changed its mind once, I'm sure we can get them to do it again?"

Setting aside the obvious arguments against extending the period of time such as cost to the U.S. taxpayer, mixed signals to the illegal aliens or the logistical difficulties created for INS in trying to extend the program, this simply is not right. We knew there were different deadlines for amnesty and agricultural workers. We knew the enormity of the task we were asking INS to do when we set a 1-year deadline. We weren't voting in a vacuum. And with the amount of debate and the length of time immigration reform was before the Congress, we weren't voting out of ignorance.

There is no new information. The facts have not changed. This was intended to be a one time and once in a lifetime opportunity. So, if anyone is serious about participating in the amnesty program, the message this House should be sending to them, and the only message it should be sending to them, is to get an application filed now. This is a once in a lifetime opportunity, don't blow it. And if they do blow it, they have only themselves to blame, not Congress and not the INS. If we are to preserve any credibility with the Nation, we must defeat this extension.

Mr. GREEN. Mr. Chairman, I rise in support of H.R. 4222, to extend the period of legalization for undocumented aliens to November 30.

When the Congress passed the Immigration Reform and Control Act of 1986, we specified that undocumented aliens should have a 1-year period in which to apply for legalization. Unless this legislation is passed this period will expire May 4. While the INS estimated that up to 3.9 million persons might be eligible for legalization and that approximately 2 million would apply, this has not been the case. To date only about 1.2 million persons have applied.

In New York State the statistics are even worse. Of 444,000 undocumented aliens thought to be eligible for legalization, only about 85,000 or 20 percent have applied.

Whether this is due to language barriers, an inadequate public relations campaign or the traditional reputation of the INS among immigrant communities, I do not know. But one thing is sure: that the best publicity campaign is word of mouth and it is only the firsthand experience of successful appplicants which will convince a reluctant immigrant community. That has taken time, and therefore I believe that this extension is necessary to allow the intent of the Congress to be fulfilled.

Mr. BIAGGI. Mr. Chairman, 18 months ago, this House passed a law which was intended to offer legal status to all eligible undocumented persons who had lived in the United States since before January 1982. The Immigration Reform and Control Act of 1986 offered these individuals amnesty and established a 1-year time frame in which applications and supporting documentation could be submitted for adjudication. Although great pains were taken to inform and educate the nearly 2 to 4 million eligible aliens, with only weeks remaining until the deadline of May 4, 1988, we now know that almost half of that population has yet to apply. Thus, this important legislation, which took years to pass, will simply not do what it was intended for; that being to bring a huge number of individuals, who have lived in this country and who have contributed to our society, out from behind closed doors.

I was happy to have been a cosponsor of H.R. 3816, which would have extended this time frame for another year. And I commend my colleague from Kentucky, the Honorable RAMANO L. MAZZOLI, for introducing the legislation now before us, H.R. 4222, because the bottom line is not whether the extension is for 7 or 12 months, but rather that we grant these undocumented aliens additional time in which to submit their applications.

It has taken more time than what was originally expected, to educate our vast alien population as to the requirements necessary for legalization. It has taken additional time to put aside the fears that many illegals had about the possibility that such an application would ultimately lead to deportation. For so long many illegal aliens had been lied to and defrauded by unscrupulous individuals that a great number, particularly those with language barriers, were naturally leary of approaching the Immigration and Naturalization Service or those designated to receive applications. The word is getting out that this program is truly meant to assist undocumented aliens and I believe that we will see a tremendous increase in the number of individuals who seek legalization within the next several months.

I truly believe that we owe it, not only to these individuals, to extend the time frame, but to all those who labored so long and so hard to have the IRCA of 1986 become a reality. A major provision of that landmark legislation was to bring millions out from behind the shadows and into the mainstream of society. H.R. 4222 only assists in that effort, and I ask my colleagues to favorably vote for its passage.

Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 4222, important legislation that would extend, through November 30, 1988, the period during which eligible undocumented workers might apply for legal resident status under the terms specified by the Immigration Reform and Control Act of 1986. Importantly, this measure would also authorize $2 million to support the provision and dissemination of information and community outreach activities associated with the extension of the legalization program.

I want to commend the distinguished chairman of the Subcommittee on Immigration, Refugees, and International Law, Congressman ROMANO MAZZOLI for crafting this legislation so necessary to ensuring the success of the 1986 immigration reform law. Unfortunately, delays in activating the education and community outreach programs essential to the legalization program have contributed to a low rate of legalization applications. The successful implementation of the legalization program is essential if we are to accomplish the goal of bringing the undocumented population out from the shadows of our society where they can be free of exploitation, fear, and become full contributing members of our Nation. Without this needed extension, as many as 2.7 million people eligible for the legalization program might fail to come under the legalization program. For example, in the District of Columbia it is estimated that 21,000 people are eligible for the legalization program, but I am informed that only 2,600 have applied. The failure of the legalization program to cover as many undocumented workers as possible would further aggravate the enforcement and social difficulties that come with a large population forced to live underground and in the shadows.

I urge my colleagues to vote for H.R. 4222 to extend the legalization program under the Immigration Reform and Control Act of 1986.

Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 4222, important legislation that would extend, through November 30, 1988 the period during which eligible undocumented workers might apply for legal resident status under the terms specified by the Immigration Reform and Control Act of 1986. Importantly, this measure would also authorize $2 million to support the provision and dissemination of information and community outreach activities associated with the extension of the legalization program.

I want to commend the distinguished chairman of the Subcomittee on Immigration, Refugees, and International Law, Congressman ROMANO MAZZOLI for crafting this legislation so necessary to ensuring the success of the 1986 immigration reform law. Unfortunately, delays in activating the education and community outreach programs essential to the Legalization Program have contributed to a low rate of legalization applications. The successful implementation of the legalization program is essential if we are to accomplish the goal of bringing the undocumented population out from the shadows of our society where they can be free of exploitation, fear, and become full contributing members of our Nation. Without this needed extension, as many as 2.7 million people eligible for the Legalization Program might fail to come under the Legalization Program. Such an unfortunate result would further aggravate the enforcement and social difficulties that come with a large population forced to live underground and in the shadows.

I urge my colleagues to vote for H.R. 4222 to extend the Legalization Program under the Immigration Reform and Control Act of 1986.

Mr. EDWARDS of California. Mr. Chairman, I rise in support of H.R. 4222.

Applications for legalization under the Immigration Reform and Control Act have come nowhere near the projections made when the bill was passed in 1986.

Much of the shortfall is attributable to the complexity of the legislation and the resulting

leadtime that was needed to put the system into place, work out the kinks, and educate the people we intended to benefit about the law, to say nothing about assuaging their fears.

We really should not let this golden opportunity fail. This extension will give the program the time it needs to succeed, something I think we all must want. It will enable us to come closer to achieving one of the central goals of the Immigration Reform and Central Act—to bring people who live in this country out of the shadows and into the mainstream of American life.

Mr. Chairman, this bill is a modest one that will help us achieve our original intent in enacting the 1985 law. I urge our colleagues to cast their votes in favor of H.R. 4222.

Mrs. LLOYD. Mr. Chairman, I rise in strong opposition to the legislation before us today to amend the Immigration and Nationality Act to extend for 6 months the application period under the legalization period.

This legalization program was created by the Immigration Reform and Control Act of 1986 which I voted against because I strongly objected to the temporary resident status granted to illegal aliens who entered the United States prior to January 1, 1982. During consideration of this bill I voted for an amendment to strip the amnesty provision from the bill which unfortunately was defeated by a narrow margin.

H.R. 4222 would extend the 1-year legalization period which will expire on May 4, 1988, unless an extension is granted. I believe this is both unwise and unnecessary and that there is no justification for such an action. I believe an extension would unnecessarily cost taxpayers money, and compromise the original intent of Congress to limit the legalization program to a period of 12 months.

The Immigration and Naturalization Service has indicated their concern about the likely cost impact of any extension. At a time when fiscal restraint is a matter of national priority, any extension of the legalization program would not justify the attendant costs. I urge my colleagues to join with me in opposing this legislation.

Mr. LANTOS. Mr. Chairman, the May 4, 1988 deadline for amnesty is rapidly approaching and all indications are that the program may well need additional time for those eligible to apply. Immigration officers, along with the hard-working staff or churches and community groups around the country, have exhibited extraordinary dedication to this program. At the time of enactment of the Immigration Reform and Control Act of 1986, the Immigration and Naturalization Service estimated that up to 3.9 million persons might be eligible for legalization, yet as of mid-March only 1.1 million persons had applied for legalization. There are still many eligible aliens who have not yet come forward for amnesty.

Many reasons can be cited for the low number of amnesty applications. Numerous midprogram changes in eligibility requirements, application backlogs, poor advertisement, and explanation of the program, and unanswered questions about family unity are all factors which have contributed to the low turnout for amnesty.

When Congress passed the immigration reform legislation in 1986, we realized that the task was monumental. One of the primary goals we in the Congress had in mind when we enacted the Immigration Reform Act was to grant amnesty to millions of illegal aliens who had, by their long-term residence in the United States, become a vital yet unprotected part of our society. We must not leave this task half done. The amnesty program needs additional time to realize its objective.

Mr. Chairman, I strongly support legislation to extend, through November 30, 1988 the period during which eligible undocumented aliens may apply for legal resident status under the terms specified by the Immigration Reform and Control Act. I urge my colleagues in the Senate to take quick action to adopt this amnesty extension into law. The successful implementation of the legalization program must be completed if we are to accomplish our goal of bringing the undocumented out from the shadows of our society where they can be free of exploitation and fear, and become full contributing members of our Nation.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute, now printed in the reported bill is considered as an original bill for the purpose of amendment.

No amendments are in order except pro forma amendments for the purposes of debate and the amendments printed in House Report 100-571, which are not subject to amendment except pro forma amendments.

The Clerk will read.

The Clerk read as follows:

H.R. 330

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF APPLICATION PERIOD UNDER THE LEGALIZATION PROGRAM.

(a) IN GENERAL.—Section 245A(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(a)(1)(A)) is amended—

(1) by striking "12-month", and

(2) by inserting "and ending on November 30, 1988" after "Attorney General".

(b) CONFORMING AMENDMENTS.—

(1) Section 245A(a)(1)(B) of such Act is amended—

(A) by striking "during the first 11 months of the 12-month period" and inserting "during (but before the last month of) the application period", and

(B) by striking "18-month" and inserting "application".

(2) Section 201(a) of the Immigration Reform and Control Act of 1986 (Public Law 99-603) is amended—

(A) in paragraph (1), by striking "two years" and inserting "30 months", and

(B) in paragraph (2), by striking "18 months" and inserting "25 months".

(c) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR DISSEMINATION OF INFORMATION.—There are authorized to be appropriated $2,000,000 to provide for dissemination of information (including community outreach activities) respecting the amendments made by this section, and the requirements to obtain benefits under section 245A of the Immigration and Nationality Act, as amended by this section.

Mr. MAZZOLI (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

AMENDMENT OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, pursuant to the rule I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GEKAS: Page 2, amend lines 3 through 8 to read as follows:

(a) IN GENERAL.—Section 245A(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1255a(a)(1)(A)) is amended—

(1) by striking "12-month", and

(2) by inserting before the period at the end the following: "and ending 12 months later or ending on November 30, 1988, in the case of an alien who demonstrates to the satisfaction of the Attorney General good cause for failure to apply during such 12 months".

Mr. GEKAS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GEKAS. Mr. Chairman, this amendment is offered in the spirit of compromise and to fulfill the object and purposes stated and restated by the chairman of the subcommittee and all the proponents of this particular extension. Namely, that there are thousands of illegal aliens at this moment who have good cause as to why they have not yet applied for amnesty; that they have good and sufficient reasons for not having taken that giant step into the offices available to them for making application for amnesty.

But we who feel that this Government and our people must keep faith with the statute that has been passed so that we can have a nation of laws upon which we can depend and upon which the world can have reliance and to know that we mean what we say, we say that let this normal 12-month period expire when the law says it must expire on May 4, but—and here is where you come in, you who are proponents of the extension who feel that there are many thousands of people out there who have good and sufficient reason to be granted an exception—but extend it, I say, through my amendment for those people who are able to demonstrate good cause.

The chairman, the gentleman from Kentucky, has stated half a dozen reasons in the 30 seconds, in the 2 minutes, in the 4 minutes that he utilized prior, why he feels that people should be accorded the right and the time, the extra time to apply for amnesty.

The gentleman from California has stated privately and publicly, the gentleman from New York who just spoke on the floor, Mr. GARCIA, said that some had not heard about it. I believe that is good cause if that can be demonstrated before the proper reviewer as to whether that individual should be granted the right to make that application.

We have a wonderful opportunity with this amendment to gain the best of both worlds; that is to give the bona fide applicant that extra chance to get amnesty while at the same time remaining good and true and strong and faithful to our own statute which says that national security must be protected as of May 4, the coming deadline for the original 12 months' period of amnesty. That is the gist and the woof and the main and the strength of this amendment. I ask you in all good faith, the one that I want to, and in good cause to adopt this amendment.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I certainly will yield to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. I thank the gentleman for yielding.

Mr. Chairman, I would like to probe a little further in terms of the gentleman's amendment and what it means. I think initially, just to comment, but I am sure the gentleman will agree that within his amendment there is no effort to establish the standards by which an immigration official——

Mr. GEKAS. I am so glad the gentleman brought that up. I have been waiting for that. But I will respond.

Mr. BERMAN. That there are no standards set forth.

Could I ask the gentleman this situation: An application, an eligible alien——

Mr. GEKAS. Is this a hypothetical?

Mr. BERMAN. This is a hypothetical but I am sure it fits in many cases.

An eligible alien, sometime after May 4 and after this bill passes and the gentleman's amendment is adopted, were to be adopted, he comes forth with an application and says "I always was very suspicious of this process, I was fearful of the breach of confidentiality, I was concerned it really did not work, I thought it was an effort to entrap me, I had friends and fellow workers who applied for legalization, and they applied many months ago and they heard nothing, they got no response. Finally last week they started getting their temporary residence cards saying they were approved for temporary residence here. I saw that the system worked and I came forward and I applied at this particular time."

Now is that good cause in the gentleman's understanding of his amendment?

Mr. GEKAS. As the trier of fact who would be presented the hypothetical that the gentleman just outlined, I think that the trier of fact would be hard-pressed not to find that an abject fear of adverse consequences, abject fear of what might happen to him or his family would qualify as good cause.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. GEKAS] has expired.

(By unanimous consent Mr. GEKAS was allowed to proceed for 5 additional minutes.)

Mr. GEKAS. Does the gentleman have a further hypothetical?

Mr. BERMAN. I have several.

Mr. GEKAS. I will yield for that purpose.

Mr. BERMAN. I would like to summarize what I have heard from the gentleman so far. One is that ignorance of the program constitutes good cause in the gentleman's opinion, assuming that the evidence establishes that the individual was in fact ignorant of the program prior to May 4. Second, that fear that he was going to be entrapped into a deportation proceeding by virtue of applying, whether it came—and for whatever possible basis as long as that fear was sincere and could be demonstrated to the satisfaction of a hearing officer, it would constitute good cause.

I wonder if the gentleman contemplates just what that means. We could deal with a number of other hypotheticals.

Mr. GEKAS. Yes, I have a number in mind.

Mr. BERMAN. As well, every single application will have to go through not just an investigation of whether they met the very specific criteria of the law, whether he applied January 1 of 1982, did they establish continuous residence requirements, were they or were they not public charges within the meaning of the law and the regulations? But an evidentiary proceeding on whether there was a good-faith basis for a determination that the individual had good cause not to apply before May 4. The gentleman is taking a procedure which is so far processed and is in the process with delays, many delays, many applications of well over 1½ million in both programs. The gentleman is now saying we will add a cumbersome, lengthy evidentiary process that will have to involve determinations of sincerity and credibility of testimony to a process that will expand the bureaucracy to an incredible level.

Mr. GEKAS. In seizing back my time I want to assert to the gentleman from California that, No. 1, the process and the mechanisms for what I determine in this process is already in place. We would not add anything because there is already an administrative remedy kind of appeal process embedded into the present law. So that is no problem at all.

I say to you, yes, given all that the gentleman has said I am hoping that 99 percent of the remaining people do apply and do demonstrate good cause. I hope that that is so. But what the benefit is that we get out of it as an American people and as a Congress of the United States is that we will have kept faith with our original mandate and at the same time given that open door to that person who sincerely has good cause for not having met the original deadline. We meet your objectives and we meet mine. And mine are yours and yours are mine. The gentleman cannot stand there and tell me that there is not a good object on my part, a good purpose to have our Government keep faith with what it says it is going to do and to meet its intents and purposes. And its intents and purposes are that this should end on May 4 to give ample time as we did before. And now we say even that we will stretch for a moment for those poor people who for some good reason failed to apply before May 4.

What is so much to ask than that kind of compromise that meets your ideals and mine as well?

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman.

Mr. ROGERS. I thank the gentleman for yielding.

Mr. Chairman, the gentleman, of course, is aware under the INS ruling that if an eligible alien seeks naturalization, that if he simply files a simple paper by May 4 that the INS will give him another 60 days to complete the process?

So in effect we are extending the deadline already by 2 months. Is the gentleman not aware of that?

Mr. GEKAS. I am aware of that. That blends into the rectitude of my amendment.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, I would like, if I might, to ask the gentleman a question.

First a question and then to state what I think to be the case.

The question is the gentleman really does not have standards for good cause. He would expect them to be done regionally by the various INS regions?

Mr. GEKAS. I was prepared for this question.

Mr. MAZZOLI. I figured just exactly that.

Mr. GEKAS. Located throughout our Federal statutory law we have countless and countless, I can give you 60 examples, right now, where we use good cause. Nowhere is that defined,

when we say "good cause," defined categorically, but left to the discretion of the trier of facts.

Most of them have to do with exactly the same type of problem we have here; an extension, the extension of an injunction.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. GEKAS] has again expired.

(By unanimous consent, Mr. GEKAS was allowed to proceed for 5 additional minutes.)

Mr. GEKAS. And on each occasion it has to do, or at least the first 40 that I found or which were located, involved an extension of time. The judge gives the right to an attorney to file preliminary objections in 15 days or an extension thereof for good cause shown. The judge does not go on, nor does the statute go on to say "this means good cause," "that means good cause"; but in the body of law that has grown up to which the gentleman and I as lawyers are accustomed, that good cause is well settled. All we are doing is transforming it into another portion of the body of law which we now contemplated, which will allow the trier of facts to apply discretion and good judgment to be able to determine what is or what is not good cause in the context of what the intent of the law is.

Mr. MAZZOLI. If the gentleman will yield further, I understand what the gentleman is saying. It does appear to this gentleman that chances are that would be probably so loose and undefined and amorphous that probably the Attorney General would elect to try to write some regulation to sort of nail it down a little bit more. I think that might be time consuming.

One other area I would like to inquire of the gentleman. I am somewhat advised and of the belief that the confidentiality which today protects all of the records and materials which are delivered to the INS office by an applicant would not so protect the permission to file, this separate filing, to show that good cause was evident and therefore the regular filing is permissible.

We, of course, have protected these individuals and have said that those materials would not be shared with the IRS, not be shared with the Social Security; that they would be sacrosanct with the Immigration Service. I am led to believe that in this instance this would not constitute a filing of an application but a separate filing, first of all to show that there was good cause, that that confidentiality could be unintentionally and not intentionally but unintentionally breached and therefore these people might be less willing to come forward in this extended period because those materials might be subject to the ability to be taken or to be acquired by other agencies of Government.

So would the gentleman advise me how he feels on that?

Mr. GEKAS. I think the gentleman has an unfounded fear in that regard, Mr. Chairman.

This amendment does not change one comma, one phrase, one purpose, one iota of the main construction of the extension of the amnesty other than the special circumstance which we have already debated. In my judgment, just as ferociously as the gentleman might argue that it changes the confidentiality portion, then others could point to other things it might change, I say to you no interpreter of this statute would reach that far.

□ 1710

Mr. MAZZOLI. Does the gentleman think his mother would?

Mr. GEKAS. My mother and the gentleman have been in touch.

Mr. MAZZOLI. I think she has. She told me about the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman, and I ask for unanimous support for my amendment.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment and against the resolution.

Mr. Chairman, it really amazes me about all the debate on this bill that I have been listening to. The promises that are being made now and when you match them up to the promises that were made when we passed the bill, they do not exactly match. It seems to me that what we are doing here is trying to fix our promises. In supporting that position, some statements had been made that just boggle my mind. One statement was made on this side of the aisle about the message never got out. Well, obviously, you do not know a whole lot about the illegal alien network, because they have a better communications network, quite frankly, than we do here in the House. You know, we say something on the back rail over there and in 30 seconds it is over in the Longworth Building. They know this program is going on. They know it.

What you are trying to do is make excuses for what has yet to be proved a program that has been successful. This whole program has been based not on the real problem of illegal immigration in America. We said that from the very beginning, but we were promised that millions of illegals would come. In the debates last year I can remember some even estimated up to 10 million would come, 3 to 10 million would come forward. It is 1.4 million so far.

We were told that this was going to be a pay-as-you-go, a budget-neutral program. Well, they are asking for even more money to implement this progam of giving illegals more time to get amnesty.

In 1986, this Congress gave a once-in-a-lifetime chance for legalization to hundreds of thousands of illegal aliens living in our country.

Now, illegal is the operative word here. Illegal aliens were given a generous one-time period to apply for amnesty, and only 1.4 million have already done so.

Now, some of my colleagues want to extend this generosity by 6 months. This is a very serious and unnecessary mistake. This extension will be very expensive. Estimates of the additional expense range from $40 to $45 million according to the Houston Amnesty Center for the next 6-month period.

This is obviously contrary to that wonderful promise of congressional intent that the amnesty program was designed to be self-funding, not an unnecessary burden on our taxpayers, and asking our taxpayers to pay for illegal people that are here illegally to become citizens of the United States ultimately. That boggles my mind.

It is unfair to allow an extra time for legalization to illegals residing in this country. What type of message do you think this sends to the millions of people who are waiting for legal admission to the United States, those people around the world who have respected our laws and awaiting their turn?

Now the INS has been fair and effective in this amnesty program that many of us opposed from the very beginning. It has even granted a 60-day grace period to answer the problem of the gentleman from California [Mr. BERMAN], Mr. Chairman, to all aliens who applied for amnesty before the beginning of May, but needed time to gather the necessary documentation.

Also, fear should not be a factor. This is not a situation of people sitting in their homes huddled saying, "Oh, they are going to deport me," because we have proven that we are a country of our word, because not one alien, not one alien that has come forward and applied, not necessarily been granted, but even applied, has been deported, not one. Now, that is a good message. That is an excellent message to those that are fearful of being deported. Not one has been deported.

The Government has gone to extraordinary lengths to publicize the amnesty program and assist aliens, in fact, I think even further than was even intended, because they have a network out there that they talk to each other and they know exactly what is going on on the floor of this House. They know exactly what is going on right now. They are so good, some of them have lived here 20, 30, 40, 50 years without being caught by our own Government and our Government is seeking them out. They are

not dumb people out there. But they are illegal.

Now, I have spoken with the Director of the Amnesty Center in Houston, Richard Riaz, about this particular bill.

He informed me that the Immigration Reform Act has been overwhelmingly successful in reaching the illegals in the Houston area. Approximately 50,000 aliens were expected to apply for amnesty. To date, over 75,000 applications have been processed in Houston alone.

I fail to see the need for additional time and expense. As Mr. Riaz so aptly put to me, more time is not the remedy for procrastinators. We all have to live with deadlines. They are going to have to live with deadlines when they become legal.

Let us stick to the one we established in our balanced compromise in 1986. May 4 should be the last day to apply.

The CHAIRMAN. The gentleman's time has expired.

(By unanimous consent, Mr. DELAY was allowed to proceed for 30 additional seconds.)

Mr. DELAY. May 4 should be the last day we apply, except if we can pass the Gekas amendment.

Mr. Chairman, we are telling the taxpayers of America that we are going to allow illegal aliens to become citizens of the United States but not only are we going to allow that, but we are going to spoon feed them to be legals, and we are going to spoon feed them, and the taxpayers, the legitimate citizens of the United States, are going to have to pay for it. I think that is wrong.

Mr. BERMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS], my friend, either does nothing or undermines the fundamental structure of the legalization program. If every reason one can think of constitutes good cause except for saying, "I knew it was May 4; I did not want to apply before May 4; I only wanted to apply after May 4, and so I did that in contempt of the program," other than that situation, every hypothetical that is thrown out in committee and now is, according to the interpretation of the author of the amendment, good cause if it is demonstrated by a preponderance of the evidence, ignorance is good cause, fear is good cause, uncertainty about whether one qualifies is good cause, inability to afford the filing fee is good cause, everything is good cause.

The amendment provides nothing except a massive burgeoning and blossoming of the length of time that will be taken to process and litigate every obligation that is filed after May 4, costly, time consuming, totally against the thrust of the gentleman's concerns about any extension at all. This adds to the cost, adds to the time, and it undermines the whole notion of a program where the filing fee constitutes the funding for the program, and undermines the principle of self-funding out of the application fees for the program, and the good cause amendment constitutes an insurmountable obstacle that will undermine the whole purpose of this extension.

What is the purpose? The purpose is recognition that Father Hesberg's Commission's recommendations to the INS, Senator SIMPSON's estimates of a population that existed in 1978 of perhaps as high as 2 million, but certainly 1 million of the eligible people, people here before January 1, 1982, have not applied.

Why not? All kinds of different reasons; some of it is just inherent in the bureaucratic nature of the legalization process, and with a population that has less access to the mainstream kind of communication that can inform them of how to work their way through that process. Some of it is the problems INS had originally in getting a publicity program started. Anyone who is living in one of the areas where significant numbers of undocumented workers reside knows that the major publicity about this program did not get started until the beginning of this year. Anyone who has looked at the statistics and as the author of the original bill, the gentleman from New York [Mr. SCHUMER] has pointed out several times, knows that the temporary residence cards, the card that shows that the program works, that it can mean something, that it will not entrap you into a deportation proceeding, was delayed for many, many months.

It is just now starting to come into full swing in terms of letting people know that their friends, their coworkers, are getting legalized.

I would like to take part of this time to just read for the benefit of the membership the report of the administrative conference of the United States headed by an appointee of President Reagan, not part of the INS, not with that fundamental question that every suggestion of an extension constitutes an attack on their veracity and on their good faith willingness to implement this program. There is no one who suggests that this extension is that. But there is a reaction within the agency at the top that seems to look at it as that kind of an attack.

The administrative conference said that the INS has opened the program to a number of additional subpopulations of eligibles through changes in its regulations. These people will not have had a full year long opportunity to apply the year that Congress intended when it passed this law.

Further, a slow start by applicants and by the INS computers has meant that many bona fide applicants have not received their temporary resident alien cards. This has deprived the program of the momentum it might otherwise have. Similarly, a late-blooming public education program has yet to have a chance to add to that momentum.

This is not coming from the gentleman from California or the gentleman from New York or a majority of the committee. This is coming from the President's own administrative conference.

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 2 additional minutes.)

Mr. BERMAN. So the administrative conference concludes that an extension of the deadline for the principal legalization program is recommended. The bill extends that program, not for a year, but simply to the date that the seasonal agricultural worker program extends to a program for which it is easier to qualify, for the only test there is working 90 days in agriculture, a program which has met all the estimates of applications and even exceeded them in its own numbers and still have 7 months to run.

The cost issue: The INS by its own actions has indicated that their offices will remain open to receive documentation for applications filed by May 4 for an additional 60 days. They have indicated that most of their offices will have to remain open because of the seasonal agricultural worker applications. The bureaucracies will all be in place. They have further indicated that for many, many months after this program closes, even as extended and the seasonal agricultural worker program closes, their offices will have to remain open, at least half of them, to process all the applications and finish the work under the legalization program.

There is not going to be some significant change in administrative policies that result from this bill. A number of high level INS officials below the level of the Commissioner have said, "Don't quote me, I'll deny it if you do, but there is nothing whatever to argue against the 7-month extension of this program."

The good cause amendment, again as I said in opening, either is worth nothing to the people who are concerned, because every reason will be good cause, or it is a fundamental obstacle to the congressional intent of the original legalization program.

The CHAIRMAN. The time of the gentleman from Califonria has again expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 1 additional minute.)

Mr. BERMAN. We have heard from the other side of the aisle so many times with respect to our legislation, "Don't just pass broad legislative prescriptions which regulatory bodies can have a field day with because there are no standards, there is no basis for letting the public know what constitutes it."

I suggest that this amendment, which is not a provision in a collective bargaining or the ability of a judge to decide on a case-by-case basis whether to give a continuance to a lawyer, but constitutes a significant change in the fundamental legalization program to apply on a nationwide basis without any standards, without any flushing out of intent. It would be a terrible mistake.

Mr. Chairman, I urge rejection of the amendment and passage of the bill.

Mr. SHAW. Mr. Chairman, I move to strike the requisite number of words, and I rise to speak in favor of the amendment.

Mr. Chairman, I shall not take the full 5 minutes. I think this is a very meaningful amendment. What it simply does is say what the proponents of the bill itself have said, that there may be some people out there who do have an excuse for not having come forward within the time allotted and if they simply can come forward and show good cause as to why they did not come in by the original deadline, they would be given an extension.

Mr. Chairman, I still oppose the bill and continue to oppose the bill, as I think any extension is in error, but if we are going to make this extension then I think this amendment makes a very simple statement. It simply says let us just extend if for those who have good cause for not having met the original deadline of May 4 as set forth by the Congress.

□ 1725

Mr. ROYBAL. Mr. Chairman, I rise in opposition to the amendment, and move to strike the requisite number of words.

Mr. Chairman, I would like to associate myself with the remarks made by the gentleman from California [Mr. BERMAN] in opposition to this amendment.

I would like to take the balance of my time to attempt to clarify with the gentleman from Kentucky [Mr. MAZZOLI] his intent with regard to family unity.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I am happy to yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank my colleague Mr. ROYBAL for bringing up this matter. As I stated in the subcommittee's oversight hearing last October, we always intended that the legalization program be administered in a humane and compassionate way. In fact, I have consistently urged that it be administered with common sense and with respect for the integrity of the family unit.

Mr. ROYBAL. Does that mean that if the INS were to break up families with minor children, it would be violating the intent of IRCA and acting contrary to the intent of this extension of legalization?

Mr. MAZZOLI. Derivative legalization for family members was not the intent of IRCA, as the report language indicates.

However, we who worked to craft IRCA have urged and continue to urge the INS, to see that compassion and care control its discretion in situtations where the unity of the family is at stake.

Surely where there are minor children and both parents qualify for legalization, or where one spouse or parent qualifies and the other does not, or where the children qualify but one of the parents does not, these situations call for sensitivity and due respect for the family unit. I would hope that during this period of extension, the INS would act accordingly, in the humane spirit of IRCA.

Mr. ROYBAL. I understand that some INS regional and district directors have implemented the INS Family Fairness policy by using their discretion to refrain from deporting immediate relatives of those eligible for legalization.

However, many people fear a change in this policy, or that it may not protect their own family members. A principal reason for the legislation we are considering is to allow persons to apply who have hesitated thus far out of such fear.

I think we should also alleviate the fears of ineligible family members who seek discretionary relief from INS on a case-by-case basis. Would you agree that confidentiality should be accorded to their requests so that they would not be subjecting themselves to the risk of family separation by doing so?

Mr. MAZZOLI. Yes, I would.

Mr. ROYBAL. Some district directors are offering the opportunity to apply for indefinite voluntary departure and work authorization under the INS's family fairness doctrine. Family members who are not eligible for legalization must show compelling humanitarian factors to qualify for such discretionary relief. Does the chairman support that use of INS's authority in such cases?

Mr. MAZZOLI. Yes, it seems to me that is a wise accommodation of the concerns for family integrity and fairness.

INS has the tools to deal with the problem of potential family separations. I am not aware that INS is being unreasonable in assessing individual cases and in taking appropriate actions.

Mr. ROYBAL. Can I have the assurance of the gentleman that he will continue to monitor the situation to ensure that discretion is exercised properly, and that family integrity is respected?

Mr. MAZZOLI. I can assure you that, as long as I am chairman of the subcommittee, I will continue to do that.

Mr. ROYBAL. I appreciate the remarks of my colleague.

Mr. MAZZOLI. If the gentleman will yield further, I do appreciate very much the efforts of the gentleman from California [Mr. ROYBAL] which range all the way back into the early 1980's in working on making this bill better. I appreciate his efforts in behalf of family fairness and family unity.

Mr. ROYBAL. I thank the gentleman from Kentucky for his comments and for his assurance that he will do everything possible to see to it that family unification is respected.

Mr. MCCOLLUM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the amendment of the gentleman from Pennsylvania [Mr. GEKAS] is a good amendment. It is a good amendment to a bad bill but it is a good amendment. It is one that would at least put some parameters on this process of how long we are going to be carrying out and just who will be able to come forward in a 6- or 7-month period on an extended amnesty basis, and it basically says that one cannot willy-nilly come forward, they have to come forward and show there is some good reason why they missed a perfectly obvious May 4 deadline that has been extremely well publicized.

The idea of an extension, just like the idea of amnesty itself, has many pitfalls. It suggests to those who are out there in a status that they should not be in but are, illegally in this country, that we are going to be in a very forgiving mood. It suggests to those who are perhaps across the border somewhere who might like to look into the window of opportunity in this country because of the conditions that exist in many other parts of the world, it suggests to them that not only do we grant amnesty, but the country and the Congress looks like it might do it a few more times and certainly is willing to be very lenient in this subject area.

I would suggest to my colleagues that that is a bad idea on the face of it, but beyond the fact that if one voted against amnesty in the first place in the original bill one certainly should vote against an extension of it here tonight. There is a fundamental

flaw in this bill in the simple fact that it is just plain not justified on very objective and unemotional reasons.

First of all, let us look at the numbers of people involved in this process. I do not know how many illegals are here. I remember debating this a couple of years ago and I for one thought we might have upward of 20 million or more people here illegally. The people on the other side who are arguing the case did not think that many. The official estimate was very small by comparison, somewhere around 3, 4, or 5 million at most and almost everyone agreed except for me because I thought more would come forward, so I am a little surprised that more did not come forward, but most everyone argued that the target number for this should be around 1.5 million people that we expect to come forward.

Mr. Chairman, it turns out they are not very far off in that regard. We have had almost that many people come forward to date. The INS is confident that by the time we reach the date of May 4 we will have over 1.4 million, which is the official Congressional Budget Office estimate, and probably closer to 1.5 million will have come forward. At the present time whether that number is actually met or not we already know we have done better than any other country in the world that has ever offered an amnesty program. We have done better than any other country has. There have been 12 other countries that have had some amnesty program and in that process of those 12 other amnesty programs no one has achieved better than a 50-percent response. If one combines all of the illegals in all of those other countries who came forward under their amnesty programs together, the total number is not as great as the numbers who have come forward during the past few months that this program has been in effect here in our country. So it has been a very generous program.

The chart that the gentleman from Georgia [Mr. SWINDALL] had up a few moments ago shows the peaks and valleys, shows that initially a lot of people came forward when this program was first out there. It shows an awful lot of people knew about the program. It shows a little drop around Christmas time when people were not much thinking about this program, and then it shows an acceleration as the awareness of the final May 4 deadline has been approaching. It has been going up steeply in that time and that is as it should be.

The fact of the matter is that people have come forward.

The second fact of the matter is that there are going to be serious consequences as to who pays for this program if it stays open. The best estimate, and who knows how many will come forward, is if we keep it open another 6 or 7 months maybe we will reach another 250,000 to 300,000 people coming out. Certainly not more than that. If that is the case, that will be great in the sense of the cost because that will pay for it. But the Immigration Service does not think that many people are going to come forward and if as anticipated we have just about peaked out on this process and we do not get anywhere near that number to come forward in this extension if it is granted, we are not going to have the funding for this program because we are going to have a problem with the fact that we have a self-funding mechanism that is dependent upon fees of those who apply. If we do not have those fees there, then the only way this program can be paid for is by dipping into the kitty that otherwise would be used for the Border Patrol and for other enforcement and other actions of INS which those of us involved with this know are underfunded anyway. It means it will be slower getting to citizenship and so on. That does not make sense.

One other fact is the fact that the General Accounting Office, who has looked into this, has said that the Immigration Service has done an outstanding job on getting the publicity out and doing the job right out there. There really is no quibbling over that point.

There is a lot of question about whether someone has a fear to come forward. We can debate that issue.

The CHAIRMAN. The time of the gentleman from Florida [Mr. MCCOLLUM] has expired.

(By unanimous consent, Mr. MCCOLLUM was allowed to proceed for 2 additional minutes.)

Mr. MCCOLLUM. Mr. Chairman, we can argue this until the cows come home, as they say, but the fact of the matter is we really do not know. The best logic and most commonsense argument is that this program has done what it is supposed to do.

I was not an advocate of this program and I have been out there in the forefront and have made every effort that I could personally to see to it that the program gained publicity. I appeared with the INS, got a news conference in my district a couple of months ago, and we managed to get all three network affiliates there, the local newspaper, and we got a lot of publicity for it and I do not think there is any way that that has been repeated around the country.

Mr. BRYANT. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I am happy to yield to the gentleman from Texas.

Mr. BRYANT. Mr. Chairman, I thank the gentleman from Florida [Mr. MCCOLLUM] for yielding. I just wanted to observe that a moment ago the gentleman from Florida stated that if one voted against amnesty that one certainly wanted to vote against this extension.

I want to make the point that I voted against amnesty and I voted for the amendment of the gentleman from Florida when the bill was considered originally, but I am voting for this bill today and I want to take issue if I may with the gentleman from Florida's characterization on the extension of amnesty. I wonder if the gentleman would not be good enough to agree with me that this bill simply is an extension of the deadline within which those who are already eligible for amnesty can apply rather than an extension of amnesty, because it does not change the date. Those that were here before January 1982 may apply and no one else may apply whether this bill passes or not. Is that not a correct statement?

Mr. MCCOLLUM. Mr. Chairman, reclaiming my time, I will respond to the gentleman from Texas that it does not change the date but it leads one to the path of concluding that if one is not an astute observer such as a legislator or technician on this, that since we are being so generous in extending dates around here for filing and qualifying, that we might feel as well to do that again down the road. I do not think it is a good idea. I do not mean to imply that this is an extension of the deadline date, the date way back when the cut day was where one started being eligible in January 1982. That certainly is not extended. I respect the right of the gentleman from Texas to have opposed it to begin with and it is fair now to support it but I disagree respectfully with that conclusion.

Mr. BRYANT. Mr. Chairman, if the gentleman will yield further, I might follow up to say I did not oppose it to begin with and favor it now, I opposed amnesty to begin with but I favor an extension of the deadline within which one may apply for amnesty now, and that is two different things. That is the point I want to make in responding to the comments of the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. I understand the point of the gentleman from Texas [Mr. BRYANT] but I think that is unfortunately an ill-founded conclusion on the part of the gentleman from Texas though I understand it and I respect it.

The CHAIRMAN. The time of the gentleman from Florida [Mr. MCCOLLUM] has again expired.

(By unanimous consent, Mr. MCCOLLUM was allowed to proceed for 1 additional minute.)

Mr. MCCOLLUM. What we are dealing with are two things, one is we are dealing with the fact that we have already adopted an amnesty or legalization program that was exceedingly controversial, that many of us opposed

to begin with, but we put it on the books, and offered the possibility to come forward. I do not think that was a good idea. Many of us do not think it is a good idea. We are now doing something which will actually add to that even though it is not an extension technically of amnesty, it is certainly an extension of the concept, an extension of the time and the date to file. It is a change in that original bill and it is wrong, in my judgment, to lead people on and encourage others potentially through a magnet process to come over here in hopes that we will continue this generosity.

Second, and the real point that most people are looking at today, is the fact that this amendment, this extension, this change, is not justified on the basis of need to fulfill the commitment that was made in the original legislation to offer legalization. May 4 is the deadline, it is a good deadline, it has been well publicized, and to extend it now would be extremely costly, potentially harmful to immigration programs that we need otherwise to be addressed, and definitely something which is not necessary according to every wise source. We have already been very generous in this country and we have met the target that those in the Congressional Budget Office even suggested we were going to meet when this program was first set up. I cannot imagine us being more generous than we have been, and I submit to my colleagues that the right vote is yes on the amendment, but no on the bill.

Mr. BRYANT. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I simply want to point out in my opinion the debate taking place so far has to some extent obscured what is basically a very simple proposition. The Committee on the Judiciary and the Subcommittee on Immigration, Refugees, and International Law recognized that the INS got off to a rather slow start. We do not blame that on anybody, but the fact of the matter is we recognized that as a result of the very rapid and soon expiration date for applying for amnesty we are about to buy ourselves a permanent bushel of problems.

□ 1740

So the Judiciary Committee has brought to the floor today a bill that does one simple thing. It extends the deadline for applying for amnesty another 7 months. It does not change the number of people who can apply. The people still have to have lived here before January 1982, and I will make the point once again that I am one of a number of Members of this House who voted along with Mr. McCOLLUM to oppose it at the beginning. But the fact of the matter is we have it today, and we are about to buy ourselves a bushel of problems, and, in fact, this ought to be the center of the debate today.

Stop to think a moment about how many hundreds of millions are going to come to the Congress and come to the Judiciary Committee and the Immigration Subcommittee asking us to grant citizenship to individuals who barely missed the deadline because they had a special reason or a special circumstance. No doubt most of those requests will sound meritorious, will fall on sympathetic ears, and the Immigration Subcommittee in this House will turn into an immigration court, and that is all we will be spending our time doing.

This is a pragmatic measure. It simply asks the House of Representatives, and the other bodies and the President to go along with a 7-month extension so we do not have a crush here and so we do not turn the Immigration Subcommittee into a court for more private bills, of which we have probably way too many already.

That is what we come forward to ask. I hope that the Members will vote against complicating amendments. These amendments do not add a thing to the bill. They simply muddle up the bill and the good cause raised by Mr. GEKAS' amendment.

But what is good cause, and what is not good cause, and how many of these cases are we going to see clogging up the bureaucracy, clogging up INS and the Justice Department and eventually clogging up the Immigration Subcommittee and this House of Representatives? Let us give them the 7-month extension so that we can get on with this.

Mr. McCOLLUM. Mr. Chairman, it seems to me, even if we extend this for 7 months, there are going to be a lot of bills, and that is inevitable in this process. You are going to have a lot of people missing the deadline just like a lot of people who miss the income tax deadline, and I do not see why it makes a difference.

Mr. BRYANT. Because, if it is 7 months, at least we are not going to have as many of these bill amendments submitted; we would probably have almost none. Let us follow common sense, and extend it 7 months, and get everybody in under the deadline and not waste any more time nitpicking about individual amendments that are clouding the issue. This is simple, and so let us make things easier on the Government and easier on this Congress.

Mr. LUNGREN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise against the amendment, and I am trying to make the good Republican argument that we ought not to be adding to the bureaucracy involved. Some of those who oppose the base bill have suggested that this is going to cost us more money. Well, if you are afraid that it is going to cost us more money, why would you require a whole new level of consideration by the bureaucracy; that is, to determine whether good cause is or is not there? Let us either vote up or down the bill.

But I am concerned, if you add good cause, no matter whether you are for the bill or against the bill, the complication is, even though I know it is not the gentleman's intent, that you are going to make the bill worse. It is going to add another question that has to be reviewed, another determination that has to be made.

I do not know how the appeal will go through on this, but it is just an additional kind of busy work, so to speak, and the ultimate proposition ought to be whether you want to extend the application period so that we can give, yes, maybe a little bit more time, maybe being very, very generous on an application question to those people who we know are eligible, because this is not going to help a single person who is not eligible under the terms of the bill that we passed eligible. We do not change the eligibility standard at all, and I am afraid the good cause question just adds another level of debate.

Mr. GEKAS. Mr. Chairman, will the genteman yield?

Mr. LUNGREN. Mr. Chairman, I am happy to yield to the gentleman from Pennsylvania.

Mr. GEKAS. Does the gentleman agree that the present bill, the present process, the one already working right now, already has as part of its statutory authorization an administrative level of bureaucracy, the one that you do not want to create?

Mr. LUNGREN. I have an additional one; that is right.

Mr. GEKAS. But it is the same one. The extention that you will favor under the present bill, the one that would extend it 6 months carries with it that same bureaucracy that you now would deny the gentleman from Pennsylvania in establishing the good cause. It is the same, one and the same, bureaucracy. The gentleman wants to extend it under the normal course of the present bill before us. I want to extend it to determine whether or not individuals have reason for establishing——

Mr. LUNGREN. I appreciate what the gentleman is saying, and I would suggest this:

What I support is a bill that will extend the application time, that does require us to maintain some apparatus for a longer period of time than would otherwise be the case. But what I am saying is, if another review element is extended into it; that is, extending the application period only for those who

can prove a good cause reason for failing to apply during the original application period, that is going to take somebody's time. That is going to take somebody's clearing responsibilities. That is going to take money to pay those people to look into those things which would not be required otherwise.

And so while I admit that we have to keep in place a certain number of personnel for a certain period of time to review these things, an additional obligation is put in, which I believe would cost money, cost time, perhaps cost additional personnel requirements, and that is all I am saying.

Mr. BUSTAMANTE. Mr. Chairman, I rise in support of extending the application period for legalization and in opposition to the Gekas amendment.

When Congress passed the Immigration Reform and Control Act of 1986, I joined the majority of my colleagues in supporting fair and enforceable immigration reform. Congress considered it essential that to succeed, immigration reform required both employer sanctions and a legalization program. The legalization program recognizes the reality of our past inconsistent immigration policy which has created a large class of undocumented aliens. If we are ever to get control of our borders and focus on border enforcement, it was agreed that we needed to deal with this population within our borders.

Since the law was passed, several studies, including studies by the Carnegie Foundation for International Peace and the Administrative Conference of the United States, have indicated that hundreds of thousands of eligible individuals have not yet applied. According to the lowest estimates used by INS, 2 million aliens are eligible for legalization, that means that with 1.2 million people who have applied, there are conservatively speaking at least 800,000 eligible aliens who have not applied. If the conservative INS estimate is correct, INS will have to contend with a large illegal population inside our border. In that situation Hispanics, and other minorities will unfairly bear the brunt of sanctions and we will still not have a handle on controlling the borders.

The negative consequences of not giving an opportunity to all eligible applicants are in and of themselves sufficient to recommend to my colleagues to vote for this extension. Moreover, we have had the opportunity to recognize that the original deadline for legalization was unrealistic. The public information campaign has just begun to have an impact, regulations and interpretations governing legalization have changed several times since the beginning of the program so that many eligibles have had much less than a full year to apply. These and other start-up problems have not provided a major portion of applicants the benefit of the full application period. Only since November have we seen significant use of the program. The extension will actually provide the eligible population we want to reach the time we originally intended for them to apply for legalization.

The Gekas amendment should be rejected for at least three reasons. First, it goes counter to the original purpose of legalization which is to include as many eligibles in the program as possible. By adding the "good cause" and other restrictions, the Gekas amendment limits the number of eligible applicants and the benefit of extending the application deadline.

Second, it complicates the already complex requirements that applicants must fulfill to qualify for legalization. Third, it complicates INS administration of the legalization program by requiring the Agency to determine on a case-by-case basis whether there is a good reason for each late application. In short, it would be an expensive administrative nightmare.

I urge my colleagues to defeat the Gekas amendment and vote for the bill.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 167, noes 246, not voting 18, as follows:

[Roll No. 60]

AYES—167

Andrews	Gingrich	Moorhead
Applegate	Goodling	Morrison (WA)
Archer	Gradison	Murtha
Armey	Grandy	Nelson
Baker	Grant	Nichols
Ballenger	Gunderson	Nielson
Bartlett	Hall (TX)	Packard
Barton	Hammerschmidt	Petri
Bateman	Hansen	Porter
Bennett	Harris	Quillen
Bentley	Hastert	Ravenel
Bereuter	Hatcher	Regula
Bevill	Hayes (LA)	Rhodes
Bilirakis	Henry	Ridge
Bliley	Hiler	Ritter
Boulter	Holloway	Roberts
Broomfield	Hopkins	Rogers
Brown (CO)	Hubbard	Roth
Buechner	Huckaby	Roukema
Bunning	Hughes	Rowland (GA)
Burton	Hunter	Saiki
Callahan	Hutto	Schulze
Campbell	Hyde	Sensenbrenner
Chapman	Ireland	Shaw
Chappell	Jeffords	Shumway
Cheney	Jenkins	Shuster
Clinger	Johnson (SD)	Sisisky
Coats	Kasich	Smith (IA)
Coble	Kolbe	Smith (NE)
Coleman (MO)	Kyl	Smith (TX)
Combest	Lagomarsino	Smith, Denny (OR)
Cooper	Latta	Smith, Robert (NH)
Coughlin	Leach (IA)	Smith, Robert (OR)
Craig	Leath (TX)	Solomon
Crane	Lightfoot	Spence
Dannemeyer	Livingston	Spratt
Darden	Lowery (CA)	Staggers
Davis (IL)	Lujan	Stallings
DeLay	MacKay	Stangeland
Dickinson	Madigan	Stenholm
Dornan (CA)	Marlenee	Stratton
Dreier	Martin (IL)	Sundquist
Duncan	Martin (NY)	Sweeney
Edwards (OK)	McCandless	Swindall
English	McCollum	Tallon
Erdreich	McCurdy	Tauke
Fawell	McDade	Tauzin
Fields	McEwen	Taylor
Flippo	McMillan (NC)	Thomas (CA)
Gallegly	Meyers	Thomas (GA)
Gaydos	Michel	Upton
Gekas	Miller (OH)	Volkmer
		Vucanovich
		Walker
		Watkins
		Weldon
		Whittaker
		Wise
		Wolf
		Wylie
		Yatron
		Young (AK)
		Young (FL)

NOES—246

Ackerman	Gejdenson	Nowak
Akaka	Gephardt	Oakar
Alexander	Gibbons	Oberstar
Anderson	Gilman	Obey
Annunzio	Glickman	Olin
Anthony	Gonzalez	Ortiz
Aspin	Gordon	Owens (NY)
Atkins	Gray (IL)	Owens (UT)
AuCoin	Gray (PA)	Oxley
Badham	Green	Panetta
Barnard	Gregg	Pashayan
Bates	Guarini	Patterson
Beilenson	Hall (OH)	Pease
Berman	Hamilton	Pelosi
Bilbray	Hawkins	Penny
Boehlert	Hayes (IL)	Pepper
Boggs	Hefley	Perkins
Boland	Hefner	Pickle
Bonior	Herger	Price (NC)
Bonker	Hertel	Pursell
Borski	Hochbrueckner	Rahall
Bosco	Horton	Rangel
Boucher	Houghton	Richardson
Boxer	Hoyer	Rinaldo
Brennan	Inhofe	Robinson
Brooks	Jacobs	Rodino
Brown (CA)	Johnson (CT)	Roe
Bruce	Jones (NC)	Rose
Bryant	Jones (TN)	Rostenkowski
Bustamante	Jontz	Rowland (CT)
Byron	Kanjorski	Roybal
Cardin	Kaptur	Russo
Carper	Kastenmeier	Sabo
Carr	Kennedy	Savage
Chandler	Kennelly	Sawyer
Clarke	Kildee	Saxton
Clement	Kleczka	Schaefer
Coelho	Kolter	Scheuer
Coleman (TX)	Konnyu	Schneider
Collins	LaFalce	Schroeder
Conte	Lancaster	Schuette
Courter	Lantos	Schumer
Coyne	Lehman (CA)	Sharp
Crockett	Lehman (FL)	Shays
Daub	Leland	Sikorski
de la Garza	Levin (MI)	Skaggs
DeFazio	Levine (CA)	Skeen
Dellums	Lewis (CA)	Skelton
Derrick	Lewis (FL)	Slattery
DeWine	Lewis (GA)	Slaughter (NY)
Dicks	Lipinski	Slaughter (VA)
Dingell	Lloyd	Smith (FL)
DioGuardi	Lott	Smith (NJ)
Dixon	Lowry (WA)	Snowe
Donnelly	Luken, Thomas	Solarz
Dorgan (ND)	Lukens, Donald	St Germain
Dowdy	Lungren	Stokes
Downey	Manton	Studds
Durbin	Markey	Stump
Dwyer	Martinez	Swift
Dymally	Matsui	Synar
Dyson	Mavroules	Torres
Early	Mazzoli	Torricelli
Eckart	McCloskey	Towns
Edwards (CA)	McHugh	Traficant
Espy	McMillen (MD)	Traxler
Evans	Mfume	Udall
Fascell	Mica	Valentine
Fazio	Miller (CA)	Vander Jagt
Feighan	Miller (WA)	Vento
Fish	Mineta	Visclosky
Flake	Moakley	Walgren
Florio	Mollohan	Waxman
Foglietta	Montgomery	Weber
Foley	Morella	Weiss
Ford (MI)	Morrison (CT)	Wheat
Ford (TN)	Mrazek	Whitten
Frank	Murphy	Williams
Frenzel	Myers	Wilson
Frost	Nagle	Wolpe
Gallo	Natcher	Wyden
Garcia	Neal	Yates

NOT VOTING—18

Biaggi	Kostmayer	Parris
Clay	Lent	Pickett
Conyers	Mack	Price (IL)
Davis (MI)	McGrath	Ray
Emerson	Molinari	Stark
Kemp	Moody	Wortley

□ 1805

Messrs. TRAXLER, FOLEY, RANGEL, and HERGER changed their votes from "aye" to "no."

Mr. FLIPPO, Mr. DENNY SMITH, Mrs. MARTIN of Illinois and Messrs. GALLEGLY, KASICH, and BEVILL changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. YOUNG of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I had intended to make this statement during the general debate on the bill, but at my scheduled time I was called away, without notice, because my wife, carrying our 10-month-old son, had been assaulted in a shopping mall, knocked to the ground, and had her wallet and purse stolen before she could even recover.

□ 1810

As you might imagine she was a little upset. So I did not get to make my statement then.

I would appreciate just a few minutes now if I could make a statement on this bill.

Mr. Chairman, I would like to talk about a couple named Henri and Jeanne Rambonnet who came to the United States in 1979 as visitors. They came to St. Petersburg, FL, where they made a lot of friends and decided they would like to live there. They went through all of the applications and paperwork to get their permanent resident status. They did the best they could to become citizens and exhausted every administrative remedy that they had to solve this problem.

The Rambonnets were no burden to the United States. They were financially independent. They were good neighbors and good friends. The community endorsed their desire to become citizens of our city and our great Nation. But they fell within the nonpreference category and could not gain permanent resident status.

The House refused to consider their problem and they were not allowed to stay in the United States. They had to go back home to their own country, The Netherlands. I had introduced private legislation on their behalf but that was denied, incidentally by the same committee that brings this bill out today. This is not an unusual case. A lot of us have the same kinds of situations in our district with friends and neighbors, but there is a little different story with the Rambonnets that I thought you might like to hear about.

As we worked with the Rambonnets on their case I learned more and more about who they were. I learned that Admiral Rambonnet, who was with The Netherlands Armed Services, was not only an outstanding citizen of St. Petersburg, FL but was a hero during World War II. When the Nazis overran Europe, Admiral Rambonnet and many of his friends could have left The Netherlands and could have left Europe and escaped to the security of Great Britain or the United States. But Admiral Rambonnet stayed behind, and he organized a system through which many American and British pilots who were shot down over Germany were safely gotten out of Europe and gotten back to Great Britain and back to the United States.

Admiral Rambonnet was a hero. He saved the lives of many, many American flyers.

General Eisenhower, who was in charge of the Allied forces at that time, was so impressed with the work that Admiral Rambonnet had done that he placed his name in the permanent record at the Supreme Headquarters of the Allied Expeditionary Force.

Admiral Rambonnet was a very unusual man, a real patriot although he was not an American citizen. But when he came here, because of our laws we turned our back on Admiral and Mrs. Rambonnet.

Then when we came to the Congress, the committee that brings this bill today turned their backs on the Rambonnets and refused even to send a bill to the floor for consideration.

This man was an American hero. He saved hundreds and hundreds of American lives.

That man is back in The Netherlands today. He cannot become a citizen of the United States despite the fact that he was a hero, despite the fact that he followed every law that we have on our books on immigration. But today you are asking us to vote, and this is the same committee which denied consideration of this man's application for permanent status for citizenship, to make it possible for another extension of time for people who ignored and violated every immigration law to make them permanent residents and citizens and given them an additional time in which to qualify under this law. We sent Admiral Rambonnet, an American hero, back to the Netherlands. I think that is asking too much. This is not a fair bill. This bill is not fair to the many people who are following the laws every day to get recognition as either permanent status or citizenship in the United States.

I strongly opposed the amnesty provisions of the Immigration Reform and Control Act when the House considered this legislation in October 1986 and I continue to believe that this measure unfairly rewards those people who have bypassed our immigration process while penalizing the thousands of law-abiding individuals who have followed the proper procedures, but have been denied citizenship for one reason or another.

Following U.S. immigration procedures is a lengthy process that requires many years of patience and hard work. When private legislation is introduced, the process becomes even longer. Of the hundreds of private bills introduced by Members each Congress, only a very few ever become law.

Many thousands of people have followed proper procedures in their effort to become U.S. citizens, but have unfortunately been denied this great honor because they do not meet each and every requirement of our immigration laws. Yet in 1986, Congress gave the millions of illegal aliens who have resided illegally in our country since before 1982 the opportunity to come forward and begin the process to become permanent residents and ultimately U.S. citizens. They will not have had to meet any of the stringent requirements which thousands of people who have patiently followed proper procedure, and were denied legal standing, had to meet.

In addition to Admiral Rambonnet, let me cite another example of a family which I tried to help who I believe had an excellent case for becoming American citizens but who were turned down by the Immigration and Naturalization Service and had to leave the country.

Dr. Walter Moser, and his wife Dr. Angrit Moser-Mahncke, were born in West Germany and were honored there as distinguished doctors of medicine. They were public health officers in their homeland and specialized in the area of nervous diseases and mental disorders.

They came to our Nation in December 1979 as retirees who were financially secure. Upon their arrival here, the pastor of a Pinellas County church discussed with them the possibility of working with the church to establish a special counseling program for emotionally disturbed individuals. The Mosers and the church were excited about this opportunity, but the program never got off the ground because the Moser's could not become permanent residents.

Like the Rambonnets, the Mosers fell in the nonpreference category and could not qualify for permanent residency. The Congress failed to enact private legislation I introduced in their behalf and they too had to leave the country.

The Rambonnets and Mosers are fine, honest, and hard working individuals who would have made outstanding American citizens. This war hero and these distinguished doctors followed the letter of the law in their effort to become U.S. citizens but did not meet the law's requirements and have had to leave our country. Had they stayed here illegally, they would now be eligible to sign up for the amnesty program begun last May.

We penalized these people who followed our law while at the same time rewarding millions of others who to-

tally disregarded our law. In most cases, the only qualification for many of the people covered by the amnesty program to become U.S. citizens is the fact that they have lived in the United States illegally for at least 6 years.

Granting amnesty to the millions of illegal aliens is bad policy and extending that amnesty by another 6 months makes that bad policy even worse. This extension would be another slap in the face to the many honest and law-abiding people, such as the Rambonnets and Mosers, who did all they could, but were denied American citizenship by the very laws which have been so blatantly disregarded by the millions of illegal aliens who would benefit by the bill presently before us.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. I yield to the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. I thank the gentleman for yielding.

Let me express my concern about the gentleman's wife and I hope that is resolved as quickly as possible.

With respect to the admiral, I have no recollection of how that case was handled.

I would be very happy to discuss that with the gentleman. Furthermore, I would like also to alert the gentleman and the House and the Congress that at some point there will be other immigration legislation scheduled and discussed and I hope the gentleman might even testify before the committee dealing with legal immigration, changes that might be necessary in the current legal immigration law.

The CHAIRMAN. The time of the gentleman from Florida [Mr. YOUNG] has expired.

(By unanimous consent Mr. YOUNG of Florida was allowed to proceed for 1 additional minute.)

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield further?

Mr. YOUNG of Florida. I yield to the chairman of the subcommittee, the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. I thank the gentleman for yielding further.

Mr. Chairman, I just want to say to the gentleman we think we have achieved a pretty decent toehold and a grip on the question of illegal entry, illegal immigration, to curb it as well as to handle it. Now we are devoting our attention to the thing the gentleman has talked about, for a long period of time, investors, people who are retirees and others perhaps like the admiral.

I would enjoy talking to the gentleman afterwards.

Mr. YOUNG of Florida. I thank the gentleman for his comments.

Mr. Chairman, I will respond that the gentleman's subcommittee gave me a very courteous hearing on Admiral Rambonnet's case before rejecting the bill.

AMENDMENT OFFERED BY MR. SHAW

Mr. SHAW. Mr. Chairman, I offer an amendment made in order under the rule.

The Clerk read as follows:

Amendment offered by Mr. SHAW: Page 2, after line 8, insert the following new Subsection (and redesignate the succeeding subsections accordingly):

(b) PERMITTING USE FOR DEPORTATION PURPOSES OF INFORMATION CONTAINED IN FALSE OR FRAUDULENT APPLICATIONS FILED DURING THE EXTENSION PERIOD.—

(1) Section 245A(c)(5)(A) of such Act is amended—

(A) by inserting "(i)" after "other than",

(B) by striking "or for" and inserting ", (ii) for", and

(C) by adding after the comma at the end the following: "or (iii) with the respect to the identification and deportation of an alien but only if the attorney General establishes, by preponderance of the evidence, that the alien, in an application for adjustment of status filed under subsection (a), has knowingly and willfully falsified, misrepresented, concealed, or covered up a material fact or has made a false, fictitious, or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".

(2) The amendments made by paragraph (1) shall only apply to applications for adjustment of status filed under section 245A of the Immigration and Nationality Act after the 12-month period described in subsection (a) of such section (as in effect before the date of the enactment of this Act).

Mr. SHAW (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

MODIFIED AMENDMENT OFFERED BY MR. SHAW

Mr. SHAW. Mr. Chairman, I offer a modified amendment.

The Clerk read as follows:

Modified amendment offered by Mr. SHAW: Page 2, after line 8, insert the following new subsection (and redesignate the succeeding subsections accordingly):

(b) PERMITTING USE FOR DEPORTATION PURPOSES OF INFORMATION CONTAINED IN FALSE OR FRAUDULENT APPLICATIONS FILED DURING THE EXTENSION PERIOD.—

(1) Section 245A(c)(5)(A) of such Act is amended—

(A) by inserting "(i)" after "other than",

(B) by striking "or for" and inserting ", (ii) for", and

(C) by adding after the comma at the end the following: "or (iii) with respect to the identification and deportation of an alien but only if the Attorney General establishes, in a proceeding conforming to the procedures for (and subject to the same standard of proof, and subject to the same administrative and judicial review, as in the case of) deportation proceedings under section 242(b) that the alien, in an application for adjustment of status filed under subsection (a), has knowingly and willfully falsified, misrepresented, concealed, or covered up a material fact or has made a false, fictitious, or fraudulent material statement of representation, or made or used any false material writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".

(2) The amendments made by paragraph (1) shall only apply to applications for adjustment of status filed under section 245A of the Immigration and Nationality Act after the 12-month period described in subsection (a) of such section (as in effect before the date of the enactment of this Act).

Mr. SHAW (during the reading). Mr. Chairman, I ask unanimous consent that the modified amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. SHAW. Mr. Chairman, I would like to ask the Members if they would be patient with us for just a few moments. I think this amendment has worked out and we are well on our way toward final passage.

Mr. Chairman, if I might briefly advise the Members as to what is in this amendment: This would permit the INS to use false or fraudulent documents presented to the INS only during the extension time as evidence in deportation proceedings.

I would advise the Members that the use of these documents is currently a felony under existing Federal law.

I have modified my amendment at the request and with the assistance of the gentleman from California [Mr. BERMAN]. The modification simply clarifies two points. It applies only to material misrepresentations. Due process will be available to the alien before a deportation can proceed against the alien using this information.

Under current law when the INS finds fraudulent documents they hand the case over to the U.S. attorney who then files the case in the criminal court.

□ 1820

We in the Congress obviously felt that this was a serious offense because the act of knowingly using fraudulent documents is a felony.

The problem that we are having is that the courts are throwing these cases out for one reason or another, possibly because the individuals are illegal aliens and therefore are already deportable.

Once a case is closed, the INS cannot go back to the files of the person. Therefore, we are left with illegal aliens who have committed fraud and are out free on the streets.

Instead of closing the case and letting the felon off scot-free, my amendment would simply allow the INS to use the information obtained in the application process.

The opportunity for fraud in the legalization program will increase dramatically if this bill is passed with an extension. We have already been advised by the INS that they are seeing more and more fraud as we are coming down to the end of the legalization program which currently ends on May 4.

This amendment sends a strong message that such fraud will no longer be tolerated by this Government.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding.

I appreciate the gentleman's cooperative attitude in working out an amendment which I think will go far to insure that in an extension period applications filed in this period will not be tainted with fraud and that that kind of action will be deterred by the gentleman's amendment, as modified.

It is my understanding that the amendment, as modified, clarifies two matters. First, it is limited to "material" misrepresentations.

Second, before the information in the legalization application can be used to begin a deportation proceeding, the INS must institute an initial proceeding to establish, by the same "standard of proof" as in deportation proceedings, that is, by clear, convincing and unequivocal evidence, that material fraud was knowingly and willfully committed.

As with deportation proceedings, this initial proceeding would before an immigration judge, and appeal to the Board of Immigration Appeals and to a Federal court of appeals would be available as in deportation proceedings; however, this provision does not, itself, establish a ground of deportation, so this would not constitute a new basis for detaining or threatening to detain the alien.

Again I want to let the gentleman know how much I appreciate this efforts. I think we have made the process during the extension period a good process that both deals with the goal of the legalization program and adds an alternative deterrent to fraud in that process.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Kentucky, the chairman of the subcommittee.

Mr. MAZZOLI. Mr. Chairman, I appreciate the gentleman yielding. I want to first commend the gentleman and my friend, the gentleman from California, for having worked this out.

Let me just also say that I have some apprehension about this because so far as we can tell from the hearings, there has been less than a 1-percent fraud rate established by the Immigration Service in almost the 12 months of the program.

We might be using that proverbial sledgehammer to kill a gnat in assistance; however, I do not, as I say, intend to object to the effort here.

I would like to ask a couple questions. Does this formulation of the gentleman apply only to cases filed during the extension period, if one is ordered by this body?

Mr. SHAW. The gentleman is absolutely right. I am not attempting to modify the law as it applies up to May 4.

Mr. MAZZOLI. Mr. Chairman, if the gentleman will yield further, then the absolute confidentiality which we have guaranteed and assured applicants over the years, that confidentiality is maintained rigidly and firmly and zealously with all applications filed by May 4; is that correct?

Mr. SHAW. The gentleman is correct.

Mr. Chairman, I thank all the gentlemen from the other side of the aisle for their cooperation in passing this.

The CHAIRMAN. The time of the gentleman from Florida has expired.

(By unanimous consent, Mr. SHAW was allowed to proceed for 1 additional minute.)

Mr. DAUB. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Chairman, I am here to voice my opposition to legislation that would extend the deadline for illegal aliens to register themselves under the legalization program of 1986.

This proposal, in the form of H.R. 4222, is misguided, underfunded, unnecessary, and unfair.

When Congress passed the Immigration Reform and Control Act 2 years ago, its intent was clear: Give illegal aliens a specific period of time in which to register, and then close the door. A move to prop open that door for 6 more months would send out the wrong message; namely, that America will again adopt a laissez faire attitude toward aliens in our country.

In addition to the conceptual problem, there is a fiscal one as well. The INS estimates that an extension of the legalization period could cost nearly $50 million, money it doesn't have.

Over a million illegals will have registered themselves by the end of this month as a result of this program. That's proof that the IRCA has worked like we wanted it to. There's no reason to tinker with it now.

Mr. SHAW. Mr. Chairman, I think the language that I am asking to be adopted, I would encourage its passage, but I would also say to the Members that I still think that the bill itself is badly flawed and should be defeated.

The CHAIRMAN. The question is on the modified amendment offered by the gentleman from Florida [Mr. SHAW].

The modified amendment was agreed to.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment is the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. FOLEY] having assumed the chair, Mr. DONNELLY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4222) to amend the Immigration and Nationality Act to extend for 6 months the application period under the legalization program, pursuant to House Resolution 428, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SWINDALL. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 213, noes 201, not voting 17, as follows:

[Roll No. 61]

AYES—213

Ackerman	Bosco	DeFazio
Akaka	Boucher	Dellums
Alexander	Boxer	Derrick
Anderson	Brennan	DeWine
Annunzio	Brown (CA)	Dicks
Anthony	Bruce	Dingell
Aspin	Bryant	DioGuardi
Atkins	Bustamante	Dixon
AuCoin	Cardin	Donnelly
Badham	Carper	Dornan (CA)
Bates	Clarke	Downey
Beilenson	Coelho	Durbin
Berman	Coleman (TX)	Dwyer
Bilbray	Collins	Dymally
Boehlert	Conte	Dyson
Boggs	Cooper	Eckart
Boland	Courter	Edwards (CA)
Bonior	Coyne	Espy
Bonker	Crockett	Evans
Borski	de la Garza	Fascell

Fazio	Lehman (FL)	Rangel
Feighan	Leland	Richardson
Fish	Levin (MI)	Rodino
Flake	Levine (CA)	Roe
Florio	Lewis (CA)	Rose
Foglietta	Lewis (GA)	Rostenkowski
Foley	Lipinski	Rowland (CT)
Ford (MI)	Lowry (WA)	Roybal
Ford (TN)	Lujan	Sabo
Frank	Luken, Thomas	Saiki
Frenzel	Lungren	Savage
Frost	Manton	Sawyer
Garcia	Markey	Scheuer
Gejdenson	Martinez	Schneider
Gephardt	Matsui	Schroeder
Gibbons	Mavroules	Schumer
Gilman	Mazzoli	Sharp
Glickman	McCloskey	Shays
Gonzalez	McHugh	Sikorski
Gordon	McMillen (MD)	Skaggs
Gray (IL)	Mfume	Skeen
Gray (PA)	Miller (CA)	Slattery
Green	Miller (WA)	Slaughter (NY)
Guarini	Mineta	Smith (FL)
Hall (OH)	Moakley	Smith (NJ)
Hamilton	Mollohan	Solarz
Hawkins	Montgomery	St Germain
Hayes (IL)	Morella	Stangeland
Hefley	Morrison (CT)	Stokes
Hefner	Morrison (WA)	Stratton
Herger	Mrazek	Studds
Hertel	Nagle	Swift
Hochbrueckner	Natcher	Synar
Horton	Neal	Torres
Hoyer	Nowak	Torricelli
Jacobs	Oakar	Towns
Johnson (CT)	Oberstar	Traxler
Jones (NC)	Obey	Udall
Jontz	Ortiz	Vento
Kaptur	Owens (NY)	Visclosky
Kastenmeier	Owens (UT)	Walgren
Kemp	Panetta	Waxman
Kennedy	Pashayan	Weiss
Kennelly	Pease	Wheat
Kildee	Pelosi	Whitten
Kleczka	Penny	Williams
Konnyu	Pepper	Wilson
LaFalce	Perkins	Wolpe
Lantos	Pickle	Wortley
Leath (TX)	Price (NC)	Wyden
Lehman (CA)	Rahall	Yates

NOES—201

Andrews	Daub	Hyde
Applegate	Davis (IL)	Inhofe
Archer	DeLay	Ireland
Armey	Dickinson	Jeffords
Baker	Dorgan (ND)	Jenkins
Ballenger	Dowdy	Johnson (SD)
Barnard	Dreier	Jones (TN)
Bartlett	Duncan	Kanjorski
Barton	Early	Kasich
Bateman	Edwards (OK)	Kolbe
Bennett	English	Kolter
Bentley	Erdreich	Kyl
Bereuter	Fawell	Lagomarsino
Bevill	Fields	Lancaster
Bilirakis	Flippo	Latta
Bliley	Gallegly	Leach (IA)
Boulter	Gallo	Lewis (FL)
Brooks	Gaydos	Lightfoot
Broomfield	Gekas	Livingston
Brown (CO)	Gingrich	Lloyd
Buechner	Goodling	Lott
Bunning	Gradison	Lowery (CA)
Burton	Grandy	Lukens, Donald
Byron	Grant	MacKay
Callahan	Gregg	Madigan
Campbell	Gunderson	Marlenee
Carr	Hall (TX)	Martin (IL)
Chandler	Hammerschmidt	Martin (NY)
Chapman	Hansen	McCandless
Chappell	Harris	McCollum
Cheney	Hastert	McCurdy
Clement	Hatcher	McDade
Clinger	Hayes (LA)	McEwen
Coats	Henry	McMillan (NC)
Coble	Hiler	Meyers
Coleman (MO)	Holloway	Mica
Combest	Hopkins	Michel
Coughlin	Houghton	Miller (OH)
Craig	Hubbard	Moorhead
Crane	Huckaby	Murphy
Dannemeyer	Hughes	Murtha
Darden	Hutto	Myers
Nelson	Schuette	Sundquist
Nichols	Schulze	Sweeney
Nielson	Sensenbrenner	Swindall
Olin	Shaw	Tallon
Oxley	Shumway	Tauke
Packard	Shuster	Tauzin
Patterson	Sisisky	Taylor
Petri	Skelton	Thomas (CA)
Porter	Slaughter (VA)	Thomas (GA)
Pursell	Smith (IA)	Traficant
Quillen	Smith (NE)	Upton
Ravenel	Smith (TX)	Valentine
Regula	Smith, Denny (OR)	Vander Jagt
Rhodes	Smith, Robert (NH)	Volkmer
Ridge	Smith, Robert (OR)	Vucanovich
Rinaldo	Snowe	Walker
Ritter	Solomon	Watkins
Roberts	Spence	Weber
Robinson	Spratt	Weldon
Rogers	Staggers	Whittaker
Roth	Stallings	Wise
Roukema	Stenholm	Wolf
Rowland (GA)	Stump	Wylie
Russo		Yatron
Saxton		Young (AK)
Schaefer		Young (FL)

NOT VOTING—17

Biaggi	Kostmayer	Parris
Clay	Lent	Pickett
Conyers	Mack	Price (IL)
Davis (MI)	McGrath	Ray
Emerson	Molinari	Stark
Hunter	Moody	

□ 1844

The Clerk announced the following pair:

On this vote:

Mr. Moody for, with Mr. Emerson against.

Mr. KOLTER changed his vote from "aye" to "no."

So the bill was passed.

The title was amended so as to read: "A bill to amend the Immigration and Nationality Act to extend the application period under the legalization program."

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN ENGROSSMENT OF H.R. 4222, IMMIGRATION AND NATIONALITY ACT

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that the Clerk may be allowed to make technical and conforming changes in the engrossment, including parenthetical United States Code citations, of the bill just passed.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Kentucky?

There was no objection.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4222, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

PERSONAL EXPLANATION

Mr. DAUB. Mr. Speaker, I was unavoidably absent and missed the rollcall votes on the intermediate nuclear forces treaty resolution, and the resolution passed in support of the Bliley amendment on dial-a-porn.

Had I been present, I would have voted "yes" in each case.

Mr. DAUB. Mr. Speaker, I strongly support House Resolution 422 which backs the Intermediate Nuclear Force Treaty between the United States and the Soviet Union.

On December 8, 1987, President Reagan and General Secretary Gorbachev signed a treaty to eliminate an entire class of intermediate-range nuclear missiles. This breakthrough was only possible because of the President's steadfast determination to deploy in Europe ground launched cruise and Pershing II missiles. This deployment was in response to the Soviets SS–20 missile threat.

There were many who argued that putting our missiles in place only escalated an arms race. They argued this deployment was counterproductive to arms control. In reality, it was the only reason the Soviets consented to this treaty and removal of the SS–20 arsenal.

However, with this treaty comes new security realities. Most important is the reality of the need for enhancing NATO's conventional forces. It is for this reason that House Resolution 422 calls for Presidential leadership on a combined effort to strengthen conventional NATO forces. It also urges efforts to reach verifiable agreements for conventional force stability including reductions of the areas that the Soviets are superior.

My guess is just as with the INF Treaty where we needed missile deployment for missile destruction, we are going to need sustained efforts at buttressing our conventional forces before the Soviets will seriously consider reducing theirs.

An important part of House Resolution 422 is it's urging that the President not be hesitant about exercising the our right to withdraw from the treaty if he determines there is Soviet cheating.

This is an important resolution and its passage indicates the wide support of the treaty in the House coupled with realistic concerns on conventional force imbalances and potential Soviet INF Treaty violations.

AN END TO DIAL-A-PORN

Mr. Speaker, the parents and families of America await the signature of the President on legislation to ban dial-a-porn. On numerous occasions, the House and Senate have made their intentions clear with respect to the pernicious enterprise of dial-a-porn vendors of sexually explicit and obscene porn talk should not be allowed to pollute the minds of our children and use the telephone lines carte blanche for profit. I rise to support the Bliley amendment.

We are not elected to be constitutional lawyers. Instead, we are elected to speak on the issues that affect the homes and lives of all Americans, especially our children.

The evidence is overwhelmingly clear that dial-a-porn produces behavior that is unacceptable and detrimental to decent people who are fighting for values under attack from the onslaught of a secularism aided by a Con-

gress which appears at times to be unable to determine moral standards.

In choosing to ban dial-a-porn, this Congress has taken a stand and has determined a moral standard for what goes across the telephone wires. Even so, some Members have expressed concern that we are treading on some kind of a sacred free speech protection and they fearfully espouse a "what's next" attitude.

Mr. Speaker, I have taken an oath to uphold the Constitution and obligate myself to follow its dictates, and nowwhere have I found a protection for commercial obscene oral material sold over the telephone wires of America. Nor do I think the Supreme Court will find a protection.

We know that dial-a-porn will not disappear without a fight. Dial-a-porn vendors will have their day in court, and this issue will be ultimately decided by the Supreme Court. I accept that, and I will be watching how it views challenges to this proposed ban which will undoubtedly become law.

In conclusion, I applaud the leadership of my colleague from Virginia for taking this opportunity to rid ourselves of dial-a-porn. I urge our President to sign this legislation.

REPORT ON RESOLUTION WAIVING ALL POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 3, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 100-577) on the resolution (H. Res. 430) waiving all points of order against the conference report on the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

PERMISSION TO PRINT REPORT ON FEDERAL ASSET DISPOSITION ASSOCIATION NOTWITHSTANDING COST

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that the report on the Federal Asset Disposition Association known as FADA, and extraneous matters be printed in the RECORD at this point notwithstanding the fact that the cost of printing the FADA report is estimated to be $18,634 as estimated by the Public Printer.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Rhode Island?

Mr. WYLIE. Mr. Speaker, reserving the right to object, and I do not intend to object, but I have some reservations about the request of the gentleman from Rhode Island [Mr. ST GERMAIN], the distinguished chairman of the Committee on Banking, Finance and Urban Affairs.

As the gentleman from Rhode Island has noted, It will cost approximately $18,000 to print this in the RECORD, not much in terms of our trillion-dollar budget but if we followed the regular procedure and submitted the report to the Committee on Banking, Finance and Urban Affairs for its review and official approval the cost would probably be approximately $1,400.

That is the procedure that we have followed for about 21 years since I have been here and so as a matter of practice staff studies have become official documents after they have been made a part of the committee report.

I have been advised by Mr. Steve Ross, general counsel to the Clerk of the House of Representatives, that in view of the Sundquist case, those persons involved in releasing this report might not be protected by traditional congressional immunity absent publication of this report in the CONGRESSIONAL RECORD.

The Supreme Court has been asked to hear that case, and it would be my judgment that it will be reversed by the Supreme Court, but I understand the concern of the chairman for the need of this publication. However, having reviewed the Sundquist decision I believe the court fails to appreciate the role of Congress in informing the American people on matters of public importance. It is a shame that such an unusual procedure as this has to be invoked. I am also concerned that given the delay in producing this report, the Committee on Banking, Finance and Urban Affairs held hearings last October 15 it may be outdated, but I do not want it to be said, Mr. Speaker, that I was trying to keep the news media from whatever benefit the report might have to it.

May I say that I have been contacted by several reporters who already seem to know the contents of the report and I understand it is controversial. I hope there is nothing libelous in it and having said that, I do not want to leave the implication that I am approving the report by not objecting to the unanimous consent request. I have not had the opportunity to read the report. I make no judgment as to its contents. I just saw the report for the first time today.

□ 1850

Mr. Speaker, I would hope that this is not the usual procedure, but I understand it under the circumstances.

Other committee members ought to be involved in the process.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

FEDERAL ASSET DISPOSITION ASSOCIATION: REPORT OF AN INQUIRY INTO ITS OPERATIONS AND PERFORMANCE

(Mr. ST GERMAIN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. ST GERMAIN. Mr. Speaker, I am setting forth here a staff report on the Federal Asset Disposition Association.

FEDERAL ASSET DISPOSITION ASSOCIATION: REPORT OF AN INQUIRY INTO ITS OPERATIONS AND PERFORMANCE

(Staff Report to the Committee on Banking, Finance and Urban Affairs)

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Fernand J. St Germain, Rhode Island, *Chairman.*
Henry B. Gonzalez, Texas.
Frank Annunzio, Illinois.
Walter E. Fauntroy, District of Columbia.
Stephen L. Neal, North Carolina.
Carroll Hubbard, Jr., Kentucky.
John J. LaFalce, New York.
Mary Rose Oakar, Ohio.
Bruce F. Vento, Minnesota.
Doug Barnard, Jr., Georgia
Robert Garcia, New York.
Charles E. Schumer, New York.
Barney Frank, Massachusetts.
Buddy Roemer, Louisiana.
Richard H. Lehman, California.
Bruce A. Morrison, Connecticut.
Marcy Kaptur, Ohio.
Ben Erdreich, Alabama.
Thomas R. Carper, Delaware.
Esteban Edward Torres, California.
Gerald D. Kleczka, Wisconsin.
Bill Nelson, Florida.
Paul E. Kanjorski, Pennsylvania.
Thomas J. Manton, New York.
Elizabeth J. Patterson, South Carolina.
Thomas McMillen, Maryland.
Joseph P. Kennedy II, Massachusetts.
Floyd H. Flake, New York.
Kweisi Mfume, Maryland.
David E. Price, North Carolina.
Nancy Pelosi, California.
Chalmers P. Wylie, Ohio.
Jim Leach, Iowa.
Norman D. Shumway, California.
Stan Parris, Virginia.
Bill McCollum, Florida.
George C. Wortley, New York.
Marge Roukema, New Jersey
Doug Bereuter, Nebraska.
David Dreier, California.
John Hiler, Indiana.
Thomas J. Ridge, Pennsylvania.
Steve Bartlett, Texas.
Toby Roth, Wisconsin.
Al McCandless, California.
Alex McMillan, North Carolina.
H. James Saxton, New Jersey.
Patrick L. Swindall, Georgia.
Patricia F. Saiki, Hawaii.
Jim Bunning, Kentucky
Joseph J. DioGuardi, New York.

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC, March 17, 1988.

To Members of the Committee on Banking, Finance and Urban Affairs:

Transmitted herewith for use by the Committee on Banking, Finance and Urban Affairs, and by the Congress, is a staff report on the Federal Asset Disposition Association (FADA).

On July 16, 1987, I instructed staff to conduct a "full-scale, top-to-bottom" inquiry into the operation and structure of FADA, a federally chartered agency subject to mounting criticism. The Committee has been inundated with complaints that FADA, which was established to assist the Federal Savings and Loan Insurance Corporation (FSLIC) dispose of billions of dollars worth of bad loans and real estate acquired from failed and troubled savings and loans, is instead costing FSLIC millions of dollars. Rather than returning monies to the ailing FSLIC insurance fund, FADA is busy running up exorbitant bills—to be paid by the that same fund.

Critics have painted a picture of a runaway agency operating outside of accepted standards of accountability, duplicating FSLIC's functions, establishing a lavish bureaucracy, failing to meet even minimal levels of performance, and holding, rather than selling, properties in order to collect more management fees.

After seven months of probing through thousands of pages of documents, of meeting with developers and subcontractors—often referred to the Committee by other Congressional offices, of interviewing key FADA, FSLIC and Federal Home Loan Bank Board (Bank Board) officials at their headquarters, regional offices or receiverships, and of analyzing data collected by the General Accounting Office, staff investigators have substantiated many of the critics' charges. In the course of the investigation, other abuses were also uncovered. The Committee's findings include:

FADA HAS BECOME ANOTHER BLOATED BUREAUCRACY

Originally envisioned as a group of 50 to 80 "specialized" real estate personnel, FADA's staff mushroomed to almost 400 by December 1987, with salaries paid in excess of $22 million. Former FADA President and Chief Executive Officer Roslyn Payne was paid $250,000 a year and received a $75,000 bonus in 1986. Other officers were awarded $125,000 in bonuses for, in all but one case, less than 6 months of work. FADA is top heavy with senior management with 32 executives paid over $3 million.

FADA MAINTAINS INEFFECTIVE AND COSTLY OPERATIONS

FADA has entered into an irrevocable lease for a computer system which has turned out to be incompatible with FSLIC's system. FADA rents costly office space rather than sharing space in buildings already owned by FSLIC receiverships. FADA retains a private investment firm to manage its $5 million portfolio when it could use the services of the Bank Board which handles a $19 billion portfolio.

FADA IS NEAR INSOLVENCY

In 1986, FADA lost $3.6 million. By the end of 1987, FADA losses totaled $15 million and it continues to lose about $1 million a month. At this rate, FADA will soon be insolvent.

These losses have resulted in FADA exhausting its original $25 million in seed money from FSLIC. By the end of 1987, FADA was forced to draw $10.2 million in advances from the Federal Home Loan Bank of Topeka.

FSLIC IS NOT GETTING ITS MONEY WORTH FROM FADA

FSLIC, which capitalized FADA with $25 million, has yet to see a significant return to the FSLIC insurance fund through the sale of FADA-managed real estate or loans. Instead, FADA has billed FSLIC for millions of dollars. FADA has charged FSLIC receiverships over $20 million in asset management and advisory fees, and another $50 million for subcontractor and reimbursable expenses in 1987 alone.

FADA IS ACCOUNTABLE ONLY TO FADA

Although an arm of FSLIC, FADA's activities are guided and influenced by its 11 member board of directors controlled by the savings and loan industry. FADA has set up a supervisory system which bypasses FSLIC in favor of directly appealing to the Bank Board. Although a federal agency, FADA considers itself a private sector entity and has fought Congressional oversight of its operations and performance.

FADA'S POLICIES PROMPT CONFLICTS OF INTEREST

FADA, which commissioned a private law firm to draft a Business Code of Conduct—rather than using the Code of Ethics used by all other government agencies—has had a number of conflicts of interest. Certain FADA employees continue to maintain financial interests in firms that could benefit from FADA contracts, and contracts have been awarded on a sole-source basis to former business associates.

Not all of the employees' financial interests were made known to FADA. For example, Robert Axley, FADA's former Senior Vice President and General Counsel, failed to officially disclose his involvement with an S&L that was closed by FSLIC until 2 months after the institution was closed and FSLIC officials had uncovered his involvement. Mr. Axley later resigned from FADA during a Justice Department investigation in which his personal financial records were subpoenaed.

FSLIC BEARS THE COST OF FADA'S MISTAKES

FSLIC has assumed the management work on some FADA assets only to be billed by FADA for services which FADA did not perform. FADA's failure to maintain and protect properties and file timely insurance claims has exposed FSLIC receiverships to tax penalties, financial losses and legal liability. FADA boasts of its expertise in loan participations, yet in certain cases, FADA lacked the ability to manage the participation loans and operate in FSLIC's best interest.

FADA'S MARKETING IS INEFFECTIVE

Since its inception, FADA has placed little or no emphasis on the development of a quality marketing program. FADA's original marketing brochure contained only four properties. In early December 1987, FADA released a second version containing 191 properties. However, more the 76 percent of the properties excluded pricing information. Nowhere in the list were maps directing buyers to the properties' location.

FADA SALES RESULTS ARE MISLEADING

Although FADA claimed $774 million in total sales and loan payoffs in its September 30, 1987, Business Plan Update, about $595 million sales and loan payoffs under contract and active negotiation. Of the remaining $179 million, $55 million did not result in a return to the FSLIC receivership.

So, FADA's $774 million in asset sales are in reality, only $124 million.

Because of these findings, I asked Bank Board Chairman M. Danny Wall to address the Committee's concerns about FADA before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance.

On October 15, 1987, Chairman Wall testified that major changes were in the offing for FADA. These were: that Roslyn Payne had been demoted from her position as CEO although she would continue as President at the same salary; that the Bank Board would establish that FADA was accountable to FSLIC; that FADA's fee structure would be changed to eliminate any question about the incentive that FADA has to sell or hold property; that there would be regular meetings between FADA and the Bank Board to clarify their relationship; that there would be a complete review of FADA's compensation schedule with any recommendations and changes implemented on January 1, 1988; that an immediate hiring freeze would be put into effect; and that the Bank Board would develop clearer policy statements regarding FADA's responsibilities.

Chairman Wall made a number of promises, but the test will be whether they can and will be carried out. FADA has been in existence since November 1985—ample time for an agency to "clean up its act." Yet, FADA continues to lose money, something the ailing FSLIC fund can ill afford. As late as January 29, 1988, the Committee was informed that only one structural change had taken place—the removal of Roslyn Payne as FADA CEO. Even the immediate hiring freeze was ignored.

FADA remains an organization that has not met even the most minimal levels of performance. We haven't the time to wait for the Bank Board and FSLIC to rework the unworkable. As of the writing of this report, the Committee understands that the Bank Board is considering two major changes that will affect FADA's operations and financial performance; that is, the selection of Gerald P. Carmen as President and Chief Executive Officer and the adoption of a new management contract between FADA and FSLIC's receiverships. The record of Mr. Carmen as Administrator of the General Services Administration (GSA) and his ability to manage federal assets has been challenged by other Congressional committees and former GSA officials. Mr. Carmen's qualifications apparently fall short of even the selection criteria established by FADA's board of directors.

In an effort to answer FADA's critics, the Bank Board has mandated the adoption of a new asset management contract between FADA and FSLIC. FSLIC's own analysis clearly indicates that the proposed change is in FADA's favor. FADA will be allowed to recoup all of its prior losses and, in the future, FADA will be given the necessary fees to break even. In one receivership alone, FADA's fee under the new contract will increase by $17 million over a 5 year period.

There's an obligation on the part of the Congress and the Bank Board to maximize the return to the FSLIC. It's time for bureaucratic infighting to take a back seat to what is best for the insurance fund. So, rather than preserve a top heavy, inefficient bureaucracy, I will work to see that FSLIC gets the authority it needs to hire and pay the necessary personnel to effectively manage its caseload of $9 billion in troubled assets.

The Committee's investigation has proven conclusively that time has run out for FADA. The time has come to abandon this costly experiment and return to a more traditional, more efficient and rational approach in handling the massive caseload of troubled and failed institutions.

19-059 O-89-16 (Pt. 6)

The transition from the jerry-built FADA structure to a more rational approach within FSLIC can be accomplished without great difficulty. FADA employees with specialized skill and abilities and FADA's asset management functions should be incorporated into the existing FSLIC structure. This phaseout of FADA should be accomplished as soon as possible. FSLIC's current regional operations structure should easily accommodate this approach.

Moreover, FSLIC should develop and implement a plan to clearly establish and direct receivership activities as government functions. This may include the adoption of many aspects of the Federal Deposit Insurance Corporation's structure and operational design for asset management and disposition.

I believe the Committee will be receptive to any statutory changes that may be needed to complete this restructuring. Time is of the essence. The Bank Board must act now to implement a more efficient and rational approach in handling the massive caseload of troubled and failed institutions.

Sincerely,

FERNAND J. ST GERMAIN,
Chairman.

ABBREVIATIONS

CEBA—Competitive Equality Banking Act of 1987.

FADA—Federal Asset Disposition Association.

FDIC—Federal Deposit Insurance Corporation.

FHLBB—Federal Home Loan Bank Board.

FSLAC—Federal Savings and Loan Advisory Council.

FSLIC—Federal Savings and Loan Insurance Corporation.

GAAP—Generally Accepted Accounting Principles.

GAO—General Accounting Office.

GSA—General Services Administration.

NHA—National Housing Act of 1934.

OGC—Office of General Counsel.

OLD—Operations and Liquidations Division.

OMB—Office of Management and Budget.

OPM—Office of Personnel Management.

REO—Real Estate Owned.

This inquiry into the Federal Asset Disposition Association was undertaken by the House Committee on Banking, Finance and Urban Affairs pursuant to the legislative, oversight and investigatory authority granted under the Rules of the House of Representatives, in particular Rule X clause 1(d) and 2 (a) and (b) of the Rules of the House of Representatives for the 100th Congress. The jurisdiction of the Committee on Banking, Finance and Urban Affairs extends to and includes all activities and operations of those agencies and departments which regulate, supervise and insure depository institutions.

SUMMARY

In mid-1987, the Committee on Banking, Finance and Urban Affairs was emerging from a lengthy legislative effort to recapitalize the Federal Savings and Loan Insurance Corporation (FSLIC). Confronted with an ever-increasing caseload of troubled and failed savings institutions, FSLIC, by early 1987, had nearly exhausted its financial resources. Unable to address the growing number of thrift insolvencies because of its own cash flow problems, FSLIC had begun to use cost containment strategies which conserved FSLIC's cash position but did little to arrest the mounting losses in the industry. Ending nearly a year of speculation, on March 3, 1987, the U.S. General Accounting Office (GAO) declared FSLIC insolvent.

Later that summer, Congress authorized FSLIC to raise $10.8 billion through the sale of bonds to the public. In addition, Congress resolved the government would stand behind the FSLIC fund and protect insured depositors. The onus now rests on the Congress and this Committee to determine if the monies available to FSLIC are being used efficiently. Spokespersons for the industry have already indicated that the authorized amount will not be enough and that additional funds, possibly taxpayer funds, will be necessary. Therefore, it is critically important to FSLIC's long-term survival that the maximum recovery be achieved from the problem assets acquired by FSLIC.

Scope of inquiry

The Committee's inquiry into the performance of FSLIC in the management and disposition of problem assets has been exhaustive. Spanning over seven months, the Committee has held extensive interviews across the country with all elements of the Federal Home Loan Bank System involved in these functions. Extensive interviews were also held with officials of state regulatory authorities, private asset management organizations, individual savings institutions, and private real estate development entities. As an adjunct to the interviews, the Committee reviewed hundreds of documents and performed extensive performance reviews and cost analyses.

Although the Committee's study was broad, the focus quickly became the Federal Asset Disposition Association (FADA). FSLIC has assigned over $5 billion in assets to FADA from problem institutions and those failed institutions in receivership. FADA, a government agency, had received criticism for its insistence on functioning as a private sector organization, for its conflicts of interest, and for its unresponsive, and at times abusive, attitude toward potential buyers of FSLIC assets. The Committee received several complaints referred through Members' offices. As the inquiry's progress was tracked by the press, the Committee received new complaints and leads weekly from the public, Members' offices, employees of FSLIC, private organizations and FADA officials.

FSLIC searches for an answer

The result of fraud, land flips, and most of all greed, the I-30 corridor between Dallas and Mesquite, Texas served as a visual warning for FSLIC officials. It looked like a ghost town at the end of the California Gold Rush. Courtesy of the speculative adventures of Texas' Empire Savings and Loan, there were approximately 3,000 condominium units in various stages of completion—more units than could reasonably have been sold in a healthy, booming Dallas economy. With the boom times at an end, thousands of uncompleted units were left to rot; many would eventually be bulldozed into the ground. A salvage operation unprecedented in FSLIC's history was on the horizon.

Soon there were other large failed institutions to join Empire Savings and Loan which had assets of $340 million. First, there were the five Tennessee savings and loans that were part of the Jake Butcher empire with assets of $300 million and then there was San Marino Savings and Loan in California with assets of $814 million. The year was 1984 and FSLIC had just taken title to more assets in one year than in the previous 50 years combined. Needless to say, FSLIC was unprepared to deal with this unexpected situation.

As FSLIC officials began to address the problem, more savings and loan examiners were sent into fast growing institutions, especially those in the Southwest. The feedback to FSLIC was that it may only have seen the tip of the iceberg. FSLIC officials began preparing a series of alternative plans of attack.

Recognizing that additional personnel and expertise would be needed, the officials began to react. Staff was increased in FSLIC regional offices although the legality of doing so was unclear. Additional staff, paid for out of other receivership monies, were hidden away in Washington for almost two years until the Bank Boards' Office of General Counsel approved of the arrangement. Most importantly, FSLIC recognized the usefulness of private asset management contractors and negotiated with the Palmieri Company to not only handle the asset management function for San Marino but also to be responsible for many of the receiver's responsibilities, such as handling claims and payments to creditors.

As 1985 rolled by, FSLIC was acquiring additional resources and expertise in handling problem assets through its regional office and receivership operations. Outside contracting had expanded and a number of real estate and workout specialists were under contract at a competitive price. Even though FSLIC officials had made great strides they realized that the problem caseload was increasing and, therefore, presented the Bank Board with several alternatives for a long-term solution. The Committee has identified seven discernably different alternatives. Only one approach is similar in any respect to FADA.

The creation of FADA

The Committee's research indicates that there was both a publicly stated and private reason for FADA's creation. The publicly announced reason for FADA's creation was to assist FSLIC in the management and disposal of problem assets. The unspoken agenda was to give the savings and loan industry, more specifically a small but very powerful subgroup of the industry, a major say in how the thrift industry's problems would be resolved. Because of the desire to make FADA work at any cost, after mid-1986, the Bank Board guaranteed FADA every sizeable contract from every FSLIC receivership. Although supposedly only a contractor for FSLIC, FADA seemingly controlled the terms of the contract. The Bank Board, in turn, encouraged FADA to ignore all normal reporting channels. A separate bureaucracy emerged—accountable to no one but its industry-connected board of directors.

FADA fails to achieve its mission

The Committee found FADA to be an organization out of control. Policies and procedures were ignored. Sole-source contracts were awarded to former business associates. Quality performance was nearly nonexistent. Criticism was muted at both FADA and FSLIC. Employees and contractors who dared to breach this wall of secrecy often felt threatened and intimidated. Meanwhile, FADA officials lived first class and received excessive salaries and bonuses—all at the expense of FSLIC.

In two short years, FADA has had an enormous impact. Currently $15 million in the red, FADA has also authorized another $51 million in subcontracts which the

FSLIC receiverships have had to pay. Several receivership and senior FSLIC officials felt that FADA's expenses were so excessive that FSLIC was exposed to lawsuits by the failed institution's creditors. These officials fought private wars with FADA in the halls of the Bank Board and eventually in the news media. Yet nothing changed. Time and time again, contracts were awarded to FADA at the insistence of the Bank Board and against the counsel of FSLIC staff—awarded without consideration of price or performance.

Rather than maximizing recoveries for FSLIC, FADA has wasted FSLIC funds. Few assets were sold and loan workouts were engineered so that the benefit to FSLIC is unclear, if not nonexistent. Originally designed to function as a "major contractor" with a small oversight staff, FADA has mushroomed into a bloated bureaucracy. Regional offices sprung up; the staff grew to over 380 employees.

The FADA bureaucracy began to challenge FSLIC's authority—first quietly, then openly. The attitude of senior FADA officials was unconscionable and communication with FSLIC was almost nonexistent. FADA officials refused to provide FSLIC receivership managers with even the most basic information on the assets FADA had been contracted with to manage. Things went so far astray that FADA would submit bills to the receiverships for payment and refuse to provide any supporting documentation, even after repeated requests.

Conflicts of interest surfaced that would not have occurred if FADA was subject to government policies and procedures. At a time when reestablishing public confidence in FSLIC should have been paramount, FADA repeatedly was charged with favoritism and cronyism. At the same time FADA "blackballed" several reputable and competent asset managers because they were already FSLIC contractors. The thinking was that FADA was created to be new and provide improvement. Thus, if FADA subcontracted with those organizations already doing similar work for FSLIC receiverships it would have been nearly impossible to defend using FADA at all, let alone on an expensive cost plus contract.

Just how much of FSLIC's money FADA wasted is difficult to determine. We know that FADA billed FSLIC receiverships over $20 million for its services alone and passed on over $51 million more in subcontractor costs. While there may be FSLIC and receivership personnel who disagree, of those interviewed by the Committee, all agreed that FADA was not cost-effective. Moreover, nine Managing Officers of FSLIC receiverships were asked to analyze FADA's cost structure in comparison to the receivership's cost structure, including the use of other private sector asset managers. All responded that utilizing FADA was wasting the receivership's money—money that rightfully belongs to FSLIC and the failed institutions' creditors.

FADA expenses have been uncontrolled

Just how well FADA officials have treated themselves is a great disappointment to the Committee. FADA's operating expenses exceed its (already inflated) revenues from receiverships by about $1 million per month. Since its inception, FADA has lost over $15 million.

It is easy to understand how FADA has lost so much money. Beginning with former FADA President and CEO Roslyn Payne's $250,000 salary (plus $75,000 bonus in 1986), FADA's top 32 senior executives have combined annual salaries in excess of $3 million. Total personnel costs were $19 million last year alone.

Another $1.8 million has been spent to date on travel expenses in excess of the amounts passed on to FSLIC receiverships. A review of the travel expense records submitted by FADA's senior officials gives a clear indication of just how out of control this area was. FADA's travel policies contain no monetary limits on reimburable travel expenses. The Committee noted that senior officials billed FADA for first-class air fares and $200 a night plus rooms at luxury hotels. The Committee learned that Ms. Payne provided her FADA credit card to her husband to purchase an airline ticket. FADA accountants, however, refused to pay the bill. She also billed FADA twice for the same expenses on at least one occasion. Ms. Payne later reimbursed FADA, but only after the Committee found the duplicate vouchers and asked FADA for an explanation. The reimbursement by Ms. Payne was dated—eight months after the vouchers were originally submitted for payment. Robert Axley, FADA's former General Counsel was paid over $1,200 by FADA for room and meal expenses at a fancy San Francisco hotel although he was permanently assigned to the San Francisco administrative office.

Other FADA expense categories also seem grossly out of line. Examples include the $888,000 paid to executive search firms; the $2.6 million in consultant fees; and the $2.2 million spent for leased office space to date. The selection of office locations is particularly interesting. Scores of vacant buildings acquired by FSLIC from failed institutions were passed over. Instead, FADA selected offices in high rent districts.

Why FADA has not achieved its purpose

FADA's dismal performance and its waste of FSLIC's and receivership creditors' money is shocking. One, wonders how things could have strayed this far from the publicly stated purpose for creating FADA. After all, if FADA's purpose was to help FSLIC recover the maximum from disposing of the assets of troubled and failed, thrifts, it is a dismal failure. However, if FADA's purpose was to allow a select few in the thrift industry to further extend their control over FSLIC policy—to allow this powerful group to make the decisions as to how the problems of the industry should be resolved without considering the cost to FSLIC—then a bull's-eye has been scored.

FADA operates on the premise that it is a private organization—affectionately referred to by FADA officers as "the company." This view of itself has fostered an air of being accountable to no one outside the organization. FADA lobbied the Committee and Members' offices to exempt itself from the Government in Sunshine Act and audit by the GAO. FADA employees are not subject to government conflict of interest standards nor do they comply with financial disclosure standards required of government employees. As the Committee's inquiry progressed, it became apparent that FADA did not believe that it was accountable to the Congress. It is evident that FADA never saw itself as being accountable to FSLIC, is sole stockholder.

FADA argues that it is accountable to no one but its own industry-controlled board of directors. And that board clearly sees FADA as a private entity.

Conclusions

The results of the Committee's inquiry are conclusive. FADA has not been effective in facilitating the maximum recovery for FSLIC, nor does it appear that it can do so given its current structure and environment. Maintaining two separate bureaucracies—one under direct government control and the other outside of all prudent checks and balances—is inefficient, wasteful, and unsupportable. Moreover, evidence compiled by the Committee indicates that FSLIC receiverships and private-sector firms can effectively perform FADA's current asset management function at a significant savings to FSLIC.

In addition, the significant resources now being devoted throughout the Bank Board, FSLIC, and obviously FADA, to incremental (but in most cases cosmetic) changes in FADA's structure and operation are wasting precious time and talent which should properly be devoted to the critical functions of asset management and disposition. It is unconscionable that the Bank Board would permit the thrift industry and its controlled "private FSLIC" to prevent the implementation of a cost effective solution to this grave problem.

In Chairman Wall's first public appearance as Chairman of the Bank Board (August 7, 1987, before the National Press Club), he stated that under his leadership the Bank Board would act as the independent regulator it is supposed to be, and not as the pawn of the industry. Chairman Wall stated "It's going to be . . . hard for the agency to continue to be preceived to be too close to the industry it regulates." The Committee has shown faith in Chairman Wall and patience for his efforts to resolve the problems resulting from the creation of FADA. Many months have passed, however, and the difficult, but necessary, decisions related to FADA have not been forthcoming. Instead, efforts such as highly publicized announcements about "changes" have been launched to defuse criticism of FADA without correcting the basic problems.

Aware of the Committee's criticism of FADA's excessive contract and wasteful and extravagant office accommodations, cosmetic public relations efforts are underway in both areas. Information obtained by the Committee, however, indicates that the renegotiated asset management contract and newly developed technical service contracts along with the planned consolidation of FSLIC/FADA offices will result in further dissipation of FSLIC assets.

For example, repricing the portfolio of the receivership for Vernon Savings and Loan under the terms of the new contracts will result in a total fee for FADA of $27.3 million over 5 years, $16.9 million more than it was under the old FADA contract. Even more dramatically, the incremental cost of using FADA over in-house asset management—including all FADA staff now responsible for Vernon compensated at their current salary and benefits level—is nearly $17.4 million over the same time period.

In addition, plans are underway to relocate FADA and FSLIC regional offices so as to reduce the obvious waste of maintaining separate administrative, accounting, and operational structures. In plans to date, however, the emphasis appears to be to save FADA from being inconvenienced and embarrassed. Saving FSLIC money has been ignored.

The great FADA experiment has failed.

CHAPTER I—FSLIC'S NEED FOR ASSISTANCE

Over the past five years a significant portion of the thrift industry has encountered large operating losses and severe capital de-

pletion and the number of troubled institutions placed into FSLIC's caseload that will ultimately require financial assistance has increased dramatically. To date, the troubles of the thrift industry have placed FSLIC in the position of liquidating over $9 billion in assets from 65 failed thrifts, managing over $20 billion in assets from 58 troubled thrifts in the management consignment program, and monitoring the condition of approximately 500 open insolvent thrift institutions.

The funds in the FSLIC insurance fund are inadequate to deal with this situation. Indeed, as late as the second quarter of 1987, FSLIC had a balance of only $600 million in cash and investments. On August 10, 1987, the Congress, acknowledging the gravity of the situation, passed the Competitive Equality Banking Act of 1987 (CEBA) to authorize FSLIC to raise $10.8 billion through the sale of bonds.

In addition to financial resources, FSLIC required an increase in human resource functions to handle the growing caseload of troubled thrifts. To this end, the Bank Board was slow to recognize and prepare for the approaching storm. It appears that several years later, in the midst of the storm, the Bank Board devised several stop-gap measures to simply keep the industry afloat. These measures included (1) the development of FSLIC regional offices to manage and dispose of assets from failed thrifts, (2) the design of a management consignment program to place ailing institutions into a holding pattern to avoid severe and detrimental effects on the insurance fund, and (3) the creation of a separate entity called the Federal Asset Disposition Association to assist FSLIC in managing and selling assets from failed institutions.

The condition of the savings and loan industry

From the time of its creation in 1934 until about 1980, the Federal Home Loan Bank System operated with a simple set of regulations designed for a savings and loan industry that primarily held one kind of asset—home mortgages—and primarily held one kind of liability—passbook deposits. According to the Bank Board, FSLIC Provided assistance to only 124 institutions in the 45 years between 1934 and 1979. Almost all cases were resolved through merger transactions and, during this period, only 13 of the 124 FSLIC-assisted institutions were closed.

During 1980 and 1981, FSLIC assisted 42 cases and closed one institution for liquidation. During the four year period from 1982 to 1986, FSLIC provided assistance to 124 institutions and closed another 48 institutions.

Since 1980, the Bank Board has had to cope with substantial changes which contributed to the increasing number of institutions requiring assistance. These changes were generated by new economic conditions, technological developments, the financial management of savings institutions themselves, and most importantly, deregulation.

The deregulation of interest rates increased competition for deposits and the cost of money (interest paid on deposits) rose rapidly to "Market" levels. In contrast, most thrift industry assets consisted of fixed rate mortgages. The result was a sharp dip in the spread between the rate of return an institution earned on its assets (loans) and its cost of funds.

As a direct result of interest rate spread problems, a large percentage of the thrift industry encountered large operating losses and capital depletion. Some institutions applied to the Bank Board for relief and received financial assistance in the form of capital certificates. Other institutions in this situation sought to overcome their earnings and capital problems by becoming involved in high-risk/high-return investments. Still other institutions, not deeply troubled by interest rate problems, were simply lured by the high return of risky investments, some increasing their total assets by up to four fold each year.

Unfortunately, some institutions that adopted the high-risk/high-return strategy today have a significant portion of their assets classified as non-performing. The combination of negative interest rate spreads and non-performing assets has resulted in FSLIC providing an alarming number of institutions with financial assistance. As of December 31, 1986, FSLIC had over 300 outstanding agreements to financially assist troubled institutions and was in the process of liquidating the assets of 49 closed institutions.

At the present time, FSLIC's caseload consists of over 200 institutions with assets of $60 billion that will require some form of financial assistance in order to be resolved. These cases do not include hundreds of other troubled institutions that the Bank Board's Supervisory Examination force has determined may require financial assistance.

In addition, the U.S. General Accounting Office (GAO) has identified that there are a large number of insolvent institutions as measured under Generally Accepted Accounting Principles (GAAP). The number of institutions with negative GAAP net worth rose from 16 in 1980 to 491 by the second quarter of 1987. More importantly, the amount of negative net worth as a percent of assets significantly worsened during this period from a negative 2.4 percent to a negative 10.14 percent. These operating GAAP-insolvent institutions had assets of over $130 billion by the end of the second quarter fo 1987. While GAAP net worth is not the only measurement of the thrift industry's condition, these statistics clearly illustrate that approximately 500 thrifts are financially very weak and getting weaker.

The condition of FSLIC

Financial strains on FSLIC have grown as the number of troubled and failed thrifts have increased. Current estimates of the funds needed to resolve the thrift industry's problems range from $5 billion to $50 billion. Although the estimates differ as to the amount of resources FSLIC will need in the period ahead, there is no disagreement that new funding sources are necessary to supplement the current deposit insurance base. FSLIC's cash and investment balance has decreased steadily from $6.8 billion in 1983 to $600 million during the second quarter of 1987. A comparison of FSLIC's cash balance and the cost of resolving known problems alone clearly indicates that financial resources other than those FSLIC has traditionally depended on (membership assessments and investment income) will be necessary.

Congress, recognizing the problems facing the Bank Board, FSLIC and the thrift industry, passed the CEBA on August 10, 1987. The Act represents the beginning of what is to be an ongoing process with the overall goal of restoring the thrift industrys trust in its regulator, of maintaining depositor confidence in the deposit insurance system, and of preserving those depository institutions dedicated to home-ownership financing. Specificially, the Act authorizes FSLIC to raise an additional $10.8 billion. Congress envisioned that this funding, coupled with FSLIC's current income stream of approximately $2.5 billion a year from regular insurance premiums, special assessments, interest income on investments, and distributions from assets being liquidated from failed institutions, would provide FSLIC with the resources necessary to seriously begin to solve the thrift industry's problems.

Human resource solutions used and options available to help solve the industry's problems

Although the industry's financial situation is extremely grave, the Bank Board has been able to avoid the mass hysteria of banking institutions and depositors brought on by the 1929 crash by providing stop-gap measures and employing cosmetic solutions. Between 1980 and 1984 FSLIC, under the Bank Board's direction, began assisting troubled institutions by issuing paper notes, such as Income Capital Certificates and Net Worth Certificates, in exchange for an ownership interest in an insolvent institution in an effort to superficially boost the troubled institution's capital.

Thus, severe problems in the industry existed in the beginning of the 1980's and there was a need for an organization with technical asset management skills similar to what FSLIC's Operations and Liquidations Division (OLD) has now evolved into. In 1985, it appears the Bank Board woke up and realized the gravity of the situation and embarked on a series of less than adequate solutions.

In the first four months of 1985 the Bank Board passed a resolution to develop regional offices for FSLIC as receiver to centralize management and the liquidation of assets from failing institutions. At this time, the receiverships' legal authority was questioned by the Bank Board's Office of General Counsel and, to date, the Bank Board's position regarding this authority remains unclear. The receiverships also received little or no direction or guidance from the Bank Board. In an effort to accomplish their mission, receivership personnel began working with contractors.

During this time, the Bank Board apparently withdrew the little support given the receiverships by halting any work with contractors and not providing additional funds and staff, in favor of waiting for the industry to come up with its solution. The industry did not come up with a solution until the third quarter of 1985, when the Bank Board created the Federal Asset Disposition Association for the purpose of assisting FSLIC in accomplishing the same task that the receiverships had been assigned—albeit without sufficient time, funds, staff, contractors, and the Bank Board's guidance or approval.

Meanwhile, in April 1985, the Bank Board, using its authority under the National Housing Act (NHA), provided FSLIC with yet another method of assisting troubled institutions—the management consignment program. This program places ailing institutions into a holding pattern and postpones their closing which, otherwise, could have a detrimental impact on FSLIC's cash position and the deposit insurance fund. Unfortunately, these same institutions are today incurring operational losses of $12 million a day or $4.4 billion a year, and thus, driving up the cost of funds for other insured institutions and exposing FSLIC to a large con-

tingent liability due to the unknown asset quality and potential litigation.

The Committee's concern is that while the number of troubled institutions increases, FSLIC funds and human resources will continue to be limited. FSLIC's future financial condition, and thus the existence of a separate thrift industry, depends on the number of cases to be resolved and the cost of resolving them. To that end, it is imperative that the Bank Board develop a cost-effective program to manage and dispose of problem assets from troubled and failed thrifts. Yet, the trust of depositors—based on the assurance that their deposits are fully insured—should remain the ultimate responsibility of the FSLIC.

FSLIC, as well as the public, cannot afford to waste scarce resources on the creation of entities that do not use the government's money to its fullest advantage. For this reason, any program developed must be able to secure for FSLIC the best obtainable return at the lowest cost. The problem assets in the portfolios of these troubled and failed institutions must be resolved in a reasonable period of time so as to provide FSLIC with as rapid a return of their cash as possible so that it can effectively deal with resolving its future caseload.

This review of FADA reflects the Committee's concern over the safety and soundness of the Federal Home Loan Bank system and more specifically, maintaining the trust of the American public and preserving a system dedicated to serving the financial needs of communities across the nation.

CHAPTER II—INVESTIGATION OBJECTIVES, SCOPE, AND METHODOLOGY

As part of the Committee on Banking, Finance and Urban Affairs' general oversight function, all banking-related activities are continually monitored. However, because of the magnitude of the problems in the thrift industry, the $10.8 billion in recapitalization scheduled to be provided to FSLIC, and the Bank Board's past performance in dealing with industry problems, Chairman St Germain announced that with the passage of CEBA his staff would closely review and evaluate the Federal Home Loan Bank system's performance.

The review and evaluation focused on which programs the Bank Board has developed to deal with the industry's problems, how the recapitalization funds are spent, which insititutions are closed, what type of assistance is provided, and how adequate resources are both in terms of personnel and funding.

In early 1987, House Banking Committee members began receiving telephone calls and correspondence from constituents complaining about FADA's operational practices and performance. The number of calls received by members of the House Banking Committeee from other Congressional members convinced Chairman Fernand J. St Germain to launch a "full-scale, top-to-bottom" investigation of FADA's operational practices and performance on July 16, 1987.

The investigation focused on FADA's asset management and disposition activities as implemented through its asset management agreements with FSLIC receiverships and with institutions in the management consignment program. As Chairman St Germain said in his announcement, "It is absolutely essential that the Congress make certain that this agency is properly structured and that it understands its mission."

The scope and coverage of the Committee investigation has been extensive. The investigation began with committee investigators obtaining general background information on the agency. Committee investigators interviewed key personnel involved with every aspect of FADA. This included several members of FADA's board of directors, three top executives at its San Francisco headquarters (Roslyn Payne, Eric Lindner, and Robert Axley) and sixteen of FADA's senior executives. The Committee also interviewed senior officials at the Federal Home Loan District Banks of San Francisco and Dallas, senior FSLIC and Bank Board officials in Washington, D.C., and several senior receivership officials from the five regional receivership offices who have the overall responsibility for liquidating the portfolio of assets from failed institutions.

The results of these initial interviews led the Committee to expand its efforts into reviewing and evaluating FADA's operational practices and performance. The Committee requested that five staff members from the U.S. General Accounting Office (GAO) be detailed to the Committee to assist it in the investigation. Two senior GAO staff members were permanently stationed in the field to deal with FADA's most complex regions, San Francisco, Los Angeles, and Dallas. Three other experienced auditors were assigned to the Committee in Washington, D.C., to investigate the numerous complaints lodged against FADA and to review and evaluate information obtained from the Bank Board, FSLIC, district banks, FADA, private-sector asset management firms, and receiverships.

In order to evaluate whether FADA's services are cost-effective, the Committee interviewed numerous managing officers from FSLIC's receiverships and private-sector asset management firms. Specifically, the Committee requested cost information from nine of FSLIC's receiverships were FADA has been assigned a significant portion of the assets. The Committee also requested that three well-known and well-established asset management firms provide it with information on the asset management services performed or being performed by their firms for FSLIC.

In an effort to gather specific information and summarize detailed cost analyses related to the asset management contracts FSLIC has with two of the three private-sector asset management firms, the Committee requested assistance from the U.S. General Accounting Office. GAO obtained information on such aspects as the asset management fee billed and the amount and rate of disposition of these two asset management firms as compared to FADA in the same institution or similar size institution with comparable asset portfolio problems.

In addition to reviewing and evaluating FADA's performance at a liquidating receivership, the Committee reviewed FADA's activities under its asset management contract with an "open" institution under the management consignment program, namely, Vernon Savings and Loan Association (Vernon) located in Vernon, Texas. At that time, the institution represented 80 percent of FADA's activity with supervised associations.

The scope of the Committee's investigation included interviewing a FADA board member, senior officials of the Dallas District Bank, two members of Vernon's Board of Directors, several past and present Vernon officials, and senior officials of San Antonio Savings Association, the institution charged with the overall responsibility for managing the troubled institution. The Committee also interviewed the Deputy State Commissioner of Texas, who has responsibility for examining state chartered thrifts, several of FADA's senior Dallas personnel, and outside legal counsel and consultants.

CHAPTER III—FADA'S ORGANIZATIONAL STRUCTURE AND MISSION

As discussed earlier, from 1980 to 1985, the Bank Board delayed establishing any cost-effective plan to deal with the problems in the savings and loan industry, while the few programs it implemented served only as stop-gap measures or cosmetic solutions. In the long run, these programs have proven themselves ineffective. In an effort to rid itself of criticism and attempt to confront the dramatic increase in troubled and failed institutions requiring financial assistance, the Bank Board, on November 5, 1985, granted a 10-year federal savings and loan charter to the Federal Asset Disposition Association (FADA).

The Bank Board's use of section 406

The Bank Board created FADA based on an interpretation of the authority it has under Section 406 of the NHA. According to FADA's charter, "FADA, with the Bank Board's approval, may accept deposits, although it was chartered for the sole purpose of liquidating and disposing of assets of failed savings and loan institutions acquired by FSLIC in its role as Receiver."

In general, Sections 406 (a) (b) and (c) of the NHA provide FSLIC with the ability to aid institutions in need of assistance by expanding the forms of financial assistance that could be provided by the agency and broadening the circumstances under which such assistance could be granted. Specifically, Section 406 (a) of the NHA authorizes FSLIC to provide for the organization of a new federal savings and loan association to accept insured accounts of any insured institution in default. FSLIC as receiver of an insured institution or institutions in default is also authorized pursuant to subsections (b) and (c) of Section 406 to:

"take over the assets of and operate such association;

take such action as may be necessary to put it in a sound solvent condition;

merge it with another insured institution;

organize a new Federal association to take over its assets;

proceed to liquidate its assets in an orderly manner;

or make such other dispositions of the matter as it deems appropriate; which ever it deems to be in the best interest of the association, its savers, and the Corporation."

This cited authority has been used by the Bank Board and FSLIC on numerous occasions to organize a new federal association to take over and carry on the business of a troubled institution.

As stated earlier, in the early 1980's the Bank Board was confronted with a number of large, failing thrift institutions. At that time, there were no buyers for these institutions and their large size made outright liquidation impractical for FSLIC. To cope with the immediate problem, the Bank Board, using the authority under Section 406 of the NHA, arranged for the FSLIC to provide financial assistance to keep them in business, and assumed overall control of their operations. The Board viewed this maneuver strictly as a temporary solution, designed to buy time until the associations regained solvency or until a final disposition could be arranged.

Specifically, this arrangement entailed creating a new institution, designated as a Phoenix institution. Each Phoenix consisted of several insolvent associations merged into a single unit. As many as five failed institutions were merged into a single Phoenix. The Bank Board created the first Phoenix association in September 1981. Altogether the Bank Board created five Phoenix associations in 1981 and 1982.

In November 1984, the Bank Board, again using the authority under Section 406 of the NHA, created a new federal association for the purpose of consolidating the insured accounts of five closed associations. FSLIC established the New Federal Savings and Loan Association of Knoxville by simultaneously transferring insured accounts of five institutions and providing cash and FSLIC notes. The Bank Board stated that this method provided insured depositors access to their accounts with minimal disruption and loss of interest.

In the spring of 1985, FSLIC, again using the authority under Section 406 of the NHA, adopted a new technique, the management consignment program, to provide it with an additional option in handling troubled savings and loan institutions. According to the Bank Board, the program was instituted as a means of early intervention in situations where an institution's assets are being dissipated. The Bank Board initially used this program to close troubled institutions and establish a new federal mutual association replacing old management with new managers hired on loan from other thrift institutions. The objective of the new management team installed by the Bank Board was to evaluate and rehabilitate these institutions to sound financial health wherever possible, and to minimize the resolution costs to the FSLIC in the event that FSLIC would be unable to rehabilitate the institution in the mangement consignment program.

Thus, since 1981, the Bank Board and FSLIC have utilized its authority under Section 406 of the NHA to establish new federal savings and loan institutions as a means to deal with problem institutions and conserve the resources of the deposit insurance fund with the overall intent of protecting depositors' accounts and meeting the financial assistance needs of the community.

In July 1985, the industry, through the Federal Savings and Loan Advisory Council (FSLAC), broadly interpreted Section 406 of the NHA and developed a proposal containing the FADA concept. FSLAC, although not part of the Bank Board, brings the concerns of the regulated to the regulator by raising the concerns of the thrift industry to the Bank Board's attention.

The industry, through FSLAC, conveyed the FADA concept as an advantage to FSLIC, stating that it could utilize FADA to provide interim management and liquidation of assets in FSLIC's troubled institutions with the Bank Board's approval. Thus, through the industry's broad interpretation of Sections 406 (a), (b) and (c) of the NHA of 1934 and its influence over the Bank Board, the Bank Board sanctioned the creation of FADA as a Federal savings and loan association on November 5, 1985.

FADA's creation

The Bank Board, FSLIC, and Congress understood that FADA was going to serve FSLIC in a subordinate role, as its principal contractor, providing FSLIC with specialized expertise in the management and disposition of assets. This Committee's investigation found that the Bank Board and FSLIC allowed FADA to expand almost uncontrollably. Initially, FADA was to serve as a small group of 50 to 80 real estate experts. By year-end 1987, FADA had mushroomed to nearly 400 employees with an annual payroll of $19 million.

With the announcement of FADA's creation, the Bank Board appointed 11 voting directors and three nonvoting directors as Board members of the agency. The three nonvoting members include the director of FSLIC, FADA's president, and one president from the Bank Board system to serve for one year with possible reappointment. While the FSLIC director represents FSLIC on the FADA board, FSLIC maintains no voting power on the FADA Board of Directors even though FSLIC owns 100 percent of FADA's stock!

The Bank Board, in addition to appointing members to FADA's Board of Directors and approving a 10-year charter for the new association, assisted in the capitalization of FADA. To secure the financial base for FADA, FSLIC provided FADA with capital for start-up costs and general operations. By March 1986, FSLIC, through the Bank Board, had purchased 25,000 shares of stock, thus capitalizing FADA at $25 million. In addition, the Bank Board authorized a line of credit for FADA backed by a contract between the FSLIC and Federal Home Loan Bank of Topeka whereby FSLIC has guaranteed repayment of up to $50 million of advances to FADA. The repayment guarantee applies only to advances used for funding receivership operations.

While the Bank Board infused FADA with $25 million in seed money provided by FSLIC plus sanctioned the Topeka Bank's provision of advances, both the Bank Board and FSLIC appear to have been very general in defining FADA's mission and objectives. In addition to the Bank Board's and FSLIC's somewhat lax role in defining FADA's mission and objectives, Congress also passed up an opportunity to spell out the agency's role through legislation. As a result, the freshly laid foundation and, thus, malleable cornerstones of this new entity were left open to interpretation, not only by FADA but also by the Bank Board, FSLIC, and Congress.

The Bank Board endorses McKenna's blueprint of FADA

During an October 17, 1985, hearing before the Financial Institutions Subcommittee of the House Committee on Banking, Finance and Urban Affairs, Bank Board Chairman Edwin J. Gray revealed that the board was considering the idea of establishing a "406 Corporation," referring to Section 406 of the National Housing Act. The "corporation" was viewed "as a possible basis for an innovative approach to addressing some of the problems that FSLIC faces." However, Chairman Gray refused to specify the corporation's structure along with a description of its goals and objectives.

Less than a month later, however, on November 5, 1985, Chairman Gray announced the creation of the Federal Asset Disposition Association before the 93rd annual convention of the U.S. League of Savings Institutions held in Dallas, Texas. The Bank Board designated Mr. William F. McKenna, a California lawyer closely associated with the savings and loan industry who many consider the patriarch of the industry and the "father" of the FADA concept, as Chairman of the Board of the new association. Mr. McKenna's ties to the industry are further emphasized by his law firm which represents several large savings and loans and his position as Chairman of the Federal Home Loan Bank of San Francisco.

In his announcement, Chairman Gray stated that "earlier in the year, Mr. McKenna, in his capacity as Chairman of the Federal Savings and Loan Advisory Council, developed the concept of a "406" association and, on behalf of the entire Savings and Loan Advisory Council, presented the idea to the Bank Board." With respect to the new association's purpose, Chairman Gray stated that "the chartering of the new FADA does not constitute a panacea for the difficulties of the FSLIC. Rather, it is one element in a much larger mosaic of actions . . . to strengthen its [FSLIC's] hand in meeting its obligations, now and in the future."

McKenna presents idea of FADA to Bank Board

The seeds of the FADA concept were planted during July 1985, when McKenna, in his capacity as chairman of FSLIC, wrote a letter to Chairman Gray in which he recommended that the Bank Board study the proposed establishment of a liquidating corporation to manage and liquidate FSLIC's increasing asset portfolio. As Mr. McKenna stated, "the Board has already moved vigorously and imaginatively to handle the problem (the large number of insolvent institutions). Your Management Consignment Program should continue to be the preferred method. An immediate additional initiative to further capitalize on the incentives, skills and flexibility of the private sector and to improve FSLIC's portfolio management and liquidation capabilities is necessary."

The new agency would not qualify as an operating savings and loan institution, but rather, it would serve the needs stated in Sections 407 (a) and (b) of the National Housing Act relating to asset liquidation and interim management. The new association's board of directors would be drawn primarily from the private sector and its working capital would be provided by FSLIC or an advance from the Federal Home Loan Bank guaranteed by FSLIC.

Mr. McKenna's letter proposed a dual incentive plan based on compensation and a shared return upon disposition of assets. The agency would recruit individuals from the private sector and provide private-sector compensation packages. Salaries and benefits would exceed those paid to government employees. The agency would be encouraged to utilize real estate management resources rather than its own regional personnel in assisting FSLIC with its diverse geographic distribution of assets. FSLIC would be required to transfer its assets to the new agency at liquidation value. Upon disposing of the assets, any returns above liquidation value would be shared by FSLIC and the new agency's employees.

The agency would not be a substitute for the management consignment program and its main purpose would be to serve FSLIC effectively. To assist FSLIC and its liquidation function, the agency would have the right to borrow and lend in order to sell properties subject to purchase-money mortgages, whereby a seller receives a mortgage as partial or total compensation for the sale of property, and it would also have the right to borrow against these types of mortgages or its related assets.

Congress relies on the Bank Board's judgement to create FADA

Congress never formally consented to the creation of FADA or acknowledged its pur-

pose or objectives. Instead, it relied on the Bank Board's best judgement in establishing FADA and learned of its mission and objectives as they were conveyed through Chairman Gray's testimony and the news media after the announcement of FADA's creation, although certain Committee staffers had received notice of the Bank Board's plan to establish FADA before it was publicly announced. As Chairman St Germain stated to Bank Board Chairman M. Danny Wall during the October 1987 hearing regarding FADA's operations and performance, "I think it is important that we consider—and that you consider—major changes in FADA and that we not overlook the possibility that the ultimate remedy might be the abolishment of FADA as it is now constituted." Congressman Henry B. Gonzalez (D-Texas) also added that:

"Unlike my colleague, my distinguished colleague from Illinois, Mr. Annunzio, I never have been for the kind of set up that this FADA represents. In the first place, it is an extraneous agency created by fiat by the Home Loan Bank Board, unaccountable to nobody.

"I think it is a gross injustice now to jump on any individual, including this lady [Roslyn Payne], because once the Congress allows the creation of such institutions or agencies, one can expect and should expect corruption. Whenever we give power to any human being, including us, and don't provide for accountability, it is to be expected that we will have corruption and abuse of that power.

"I think the whole set up is so bad it should have never been created that way, and, second, it ought to be abolished instead."

As previously stated, FADA was not created by or pursuant to specific legislation. The Bank Board created FADA based on its interpretation of the authority it has under Section 406 of the National Housing Act. FADA was created as a new Federal savings and loan association for the sole purpose of assisting FSLIC in the management and liquidation of assets of failed and troubled institutions. This was the first, and to date only, use of Section 406 for this purpose.

The legitimacy of creating FADA as a quasi-government entity has not yet been clearly established, thus greatly contributing to FADA's lack of clear direction and accountability. This issue—is FADA fish or fowl—should have been resolved by the Bank Board long ago. FADA is owned by FSLIC and performs government functions. There is no legitimate defense for exempting FADA from the important checks and balances associated with being a government entity.

FADA impedes the enhancement of FSLIC's liquidations functions

Committee investigators understand that FSLIC never received the authority from the Bank Board to hire the significant number of employees necessary to manage the anticipated and potential liquidations work during the early and mid 1980's, respectively. At FSLIC's individual receiverships, where the management, marketing, and disposition of acquired assets takes place, FSLIC was relying on an extremely small group of nongovernmental employees charged with a fiduciary responsibility to the institutions' creditors, with FSLIC being their largest creditor.

The Bank Board's failure to provide FSLIC with additional resources is evident in numerous memos FSLIC sent to the Bank Board. One such memo from a FSLIC official, dated August 1984, noted that "without these Receivership employees, FSLIC could not fulfill its statutory responsibilities as Receiver." FSLIC reminded the Bank Board that the current administration supports a policy of reducing unnecessary federal employment by contracting out for services whenever possible. While FSLIC was not contracting out all of its liquidations functions, it was relying on nongovernmental employees coupled with private-sector contractors to assist it in its liquidations functions.

While FSLIC diligently sought to obtain approval from the Bank Board to intensify its liquidations forces, on December 7, 1984, San Marino Savings and Loan Association in San Marino, California, with assets just over $800 million, failed. With approval from the Bank Board, FSLIC made a decision to contract out the management of San Marino's assets to a private-sector asset management firm rather than managing the assets in-house due to FSLIC's human resource limitations in the area of asset management and liquidations. The contractor chosen for the assignment was the Victor Palmieri Company, a reputable Los Angeles, California asset management and disposition firm.

Soon after the contract was negotiated, however, the Bank Board decided that this was not the appropriate methodology and severely limited FSLIC's future use of major contractors to liquidate a large portfolio of acquired assets. In addition to denying FSLIC the authority to contract out large portfolios of assets to reputable asset management firms to assist it in its increased caseload and denying FSLIC the authority to hire a significant number of employees to expand its liquidations function, the Bank Board ignored the proposals from FSLIC officials who were developing alternatives to assist it in the management, marketing, and disposition of troubled assets acquired from failed institutions.

Alternatives to assist FSLIC's liquidation efforts

During the period 1983 through 1985, FSLIC's directors and acting directors presented the Bank Board with seven alternatives for dealing with the increasing caseload of troubled savings and loan institutions. The Bank Board has consistently denied that documentation of these alternatives exists. Nonetheless, Committee investigators, through discussions with former directors and deputy directors of FSLIC and FSLIC's Operations and Liquidation Division, have learned that FSLIC had presented these alternatives to the Bank Board to improve FSLIC's current liquidation system and to ease its ever-growing asset caseload. Based on documentation reviewed by Committee investigators, FSLIC Directors presented the following alternatives to the Bank Board:

(1) The Bank Board could approve the present system which allows the hiring of nonfederal employees and, thus, decreases the need for hundreds of additional federal employees.

(2) The Bank Board could adopt a liquidations system similar to the Federal Deposit Insurance Corporation's (FDIC), which might require: a) a statutory change given that FSLIC's governing statutes are different from EDIC's, and b) obtaining the approval of the Office of Personnel Management (OPM) and Office of Management and Budget (OMB) in order to bring on career federal employees and liquidation employment staff at a lower grade to perform the liquidation work.

(3) FSLIC could develop special-purpose contracts which would allow FSLIC to selectively contract with individuals to serve as quasi-federal employees or independent contractors for the purpose of engaging their services for common or decentralized services under the supervision of FSLIC liquidation staff.

(4) FSLIC could broaden the use of contracting which would allow FSLIC Receiverships to enter into broader contracts for general management services and specific functional services.

(5) The Bank Board could establish an Office of Liquidations within the Federal Home Loan Bank system with reporting responsibility to the Bank Board through the director of FSLIC. While this office would be associated with FSLIC, it would have enhanced flexibility to hire and compensate employees as necessary. (The Office of Liquidations would be similar to the establishment of the Bank Board's Office of Finance and the Office of Regulatory Policy, Oversight and Supervision. Both offices operate within the bank system, and, since the office directors report directly to the Bank Board, the Bank Board has minimized any added layers of bureaucracy.)

(6) The Bank Board could delegate the Office of Liquidations as a FSLIC agent under the Federal Home Loan Bank system which would allow receivership employees to become Bank System employees funded through their receiverships.

(7) The Bank Board could obtain legislation to form a federal asset management corporation, established in the manner identical to the creation and structure of the Federal Home Loan Mortgage Corporation, which would serve as FSLIC's liquidation agent. The corporation would operate as a profit-making, industry-owned, private corporation with the Bank Board members as its board of directors. FSLIC's Operations and Liquidations Division would then become part of the management corporation, which would manage the liquidation of FSLIC and receivership assets for a management fee and a share of the proceeds.

The table on the following pages outlines the advantages and disadvantages of each alternative presented to the Bank Board. While none of FSLIC's documented options incorporated the creation of FADA, it became evident to the Committee investigators that FSLIC was attempting to solve the problem of a burdensome asset caseload by expanding its own asset management and disposition functions as opposed to duplicating its liquidations functions, which is exactly what FADA has become—a duplicator of FSLIC's liquidations functions albeit with FADA policies and procedures.

TABLE 1.—ADVANTAGES AND DISADVANTAGES OF FSLIC'S ALTERNATIVES

Options available	Advantages	Disadvantages
(1) The Bank Board could adopt FSLIC's current liquidations system supported by a receivership system comprised of non-Federal employees.	This option has proven itself efficient, low-cost and flexible.	Congress, the U.S. General Accounting Office, or the Office of Personnel Management [OPM] and the Office of Management and Budget [OMB] could potentially take exception with the Bank Board's authority, or lack thereof, to use private-sector employees to perform FSLIC receivership functions, which are essentially "governmental".

TABLE 1.—ADVANTAGES AND DISADVANTAGES OF FSLIC'S ALTERNATIVES—Continued

Options available	Advantages	Disadvantages
	Minimizes the need for hiring hundreds of additional Federal employees.	
(2) The Bank Board could adopt a liquidations system similar to FDIC's.	The system would be modeled after FDIC's system which has a proven track record.	FSLIC's statutes might need to be changed to conform to those governing FDIC.
	Eliminates FSLIC's need to pay any of its liquidations staff private-sector salaries.	Such a system would require hiring FSLIC receivership employees as career Federal employees.
	Allows for the delineation of authority from Senior FSLIC and/or Bank Board officials to the liquidations staff, and, as such, makes these individuals accountable to FSLIC and the Bank Board.	In order to hire such employees, FSLIC/Bank Board would have to obtain the necessary approval from OPM and OMB.
	Centralizes liquidations policymaking and operations under one Government agency's control.	
(3) FSLIC could adopt special-purpose contracts and thus selectively contract with individuals to serve as quasi-Federal employees or independent contractors in performing liquidations functions under the supervision of FSLIC liquidations staff.	Eliminates the establishment of a separate bureaucratic structure.	The system might be more expensive to operate as a result of contracting out the majority of the work.
	Allows for the delineation of authority from FSLIC liquidations staff and officials to individuals under contract, and, as such, makes these individuals accountable to FSLIC and the Bank Board.	Contractors may take their role as fiduciary agent for the Bank Board/FSLIC too lightly.
	Allows FSLIC the flexibility to contract work out with individuals who possess specialized or technical expertise to supplement its asset management, marketing, disposition, and other liquidations functions requiring such expertise.	FSLIC could have less influence and authority over independent contractors' performance due to the diversity of knowledge and experience across contractors as well as their varied interpretations of FSLIC's asset management and disposition policies and procedures.
	Eliminates part of the concern that under FSLIC's receivership system non-Federal employees are performing "governmental" functions by contracting with individuals to serve as quasi-Federal employees.	
(4) FSLIC could expand its current contracting function in the areas of general asset management services and specific function services.	Contractors can be very effective in highly specialized or highly technical fields and thus provide FSLIC with unique private-sector asset management, marketing, and disposition techniques.	A contract system is profit motivated, thus, receivership operating costs might increase. FSLIC could have less influence and authority over contractors' performance due to the diversity of knowledge and experience across contractors as well as their varied interpretations of FSLIC's asset management and disposition policies and procedures.

TABLE 1.—ADVANTAGES AND DISADVANTAGES OF FSLIC'S ALTERNATIVES—Continued

Options available	Advantages	Disadvantages
(5) The Bank Board could set up an Office of Liquidations within the Federal Home Loan Bank system with reporting responsibility to the Bank Board through FSLIC's Director.	Removes the Bank Board from OMB and OPM budgetary and human resource constraints, thus allowing FSLIC to attract larger numbers of talented employees by hiring employees at its discretion and paying salaries above the Federal pay scale.	FSLIC would have to restructure its current liquidations system and, thus, incur a minimal expense.
	Allows for the liquidations staff to be directly accountable to the FSLIC Director and the Bank Board.	
	Centralizes liquidations policymaking and operations under one Government agency.	
(6) The Bank Board could obtain congressional approval of FSLIC's current liquidations system.	Eliminates any question regarding the legality of FSLIC's receivership system and its use of non-Federal employees. The use of non-Federal Government employees in key senior receivership positions creates the potential for influence by the savings and loan industry and the private sector.	The use of non-Federal Government employees in key senior receivership positions creates the potential for influence by the savings and loan industry and the private sector.
	Results in Congressional oversight and review of the liquidations system to ensure efficiency and effectiveness.	May not be able to attract the required personnel due to salaries which, although above the Federal pay scale, do not compete with private-sector salaries.
(7) The Bank Board could obtain legislation to form a Federal Asset Management Corporation [FAMC] to perform FSLIC's liquidations functions.	FAMC would be a private-sector corporation offering private-sector expertise.	The potential for conflicts of interest increase two-fold due to the FAMC being industry-owned and operated by the private sector.
	FSLIC's current liquidations system would be folded into FAMC to assist FSLIC in its liquidation of assets.	More costly due to its private-sector status.
		No opportunity to pilot test this system to determine its efficiency and effectiveness before start-up.

In addition to these alternatives, FSLIC recommended that OPM deliver an opinion on whether the work of receivership employees is so "governmental" that it should be performed by federal employees. In light of the various changes in law since 1942 and the change in federal policy which, in recent years, supports contracting out for services when practical, FSLIC assumed OPM's position that the Bank Board could conclusively determine that the receivership work is not intrinsically "governmental".

In an October 1985 memorandum, FSLIC's deputy director, writing to the FSLIC director, summarized previous efforts presented to the Bank Board in seeking approval of increases in staff to support its liquidations work. Specifically, the memo noted that "in the summer of 1985, FSLIC documented to the Bank Board its need for additional staff. The case was made in the Chairman's budget letter to OMB, requesting an increase in two increments, with 94 vacancies requested for FY 1986 and another 74 vacancies in FY 1987." Committee investigators understand that OMB approval was not received by the Bank Board until December 1985, 1 month after FADA was chosen as the preferred alternative. Even with OMB's approval, the Bank Board proposed a hiring freeze, and again FSLIC was denied staff increases.

According to FSLIC officials interviewed by Committee investigators, "an ambivalent commitment on the part of the Bank Board to the receivership system impeded its development. The Bank Board was consistently perceived to be unaware of or uninterested in the receivership system. The Bank Board never addressed questions regarding the legality of the receivership system which were raised by the Office of General Counsel on numerous occasions. The Bank Board's ambivalence towards the receivership system created an atmosphere of uncertainty and a fear of imminent dismantling." FADA, as envisioned in its early stage by FSLIC's senior officials, was to comprise a small group of 50 to 80 real estate experts to provide cost-effective solutions to FSLIC's burgeoning asset caseload. The general mission of this group was to enhance FSLIC's asset management and disposition functions through its real estate expertise.

Even though the Bank Board was presented with seven alternatives to address FSLIC's liquidation needs, including the option to enhance its own functions by expanding in-house resources and the option to establish a new office to support its liquidations efforts, Chairman Gray decided in favor of a privatized group to perform this important government function. The decision came as a complete surprise to many members of the Banking Committee and even some of FSLIC's own officials at the time because FADA, as adopted, was never considered a viable alternative until Chairman Gray endorsed Mr. McKenna's proposal.

The Bank Board either knowingly or unknowingly did not act on suggestions by senior FSLIC staff to begin recruiting the necessary number of technically qualified employees to effectively address the ever increasing number of problem assets to be managed and hopefully sold. If true, this would appear to have been done so as to make a "private sector" solution, such as that proposed by Mr. McKenna, a more desirable approach. This inaction on the part of the Bank Board allowed FSLAC, Mr. McKenna, and the thrift industry ample opportunity to present the FADA proposal. Thus, FSLAC's proposal for the creation of FADA, as adopted by the Bank Board, clearly demonstrates the influence of Mr. McKenna and the savings and loan industry in shaping this new private-sector concept. Interestingly enough, Mr. McKenna now chairs FADA's Board of Directors, a Board comprised of directors who are savings and loan industry leaders.

FADA and its 11-member board have deep ties to the savings and loan industry. (see Attachment 1.1) The current board is comprised of savings and loan executives, present and former United States and State League of Savings Institutions representatives, present and former directors of the Federal Home Loan District Banks, and present and former members from the Federal Reserve Board Thrift Advisory Council and the Federal Savings and Loan Advisory Council. The table on the following pages shows the FADA board members' current and previous business and professional affiliations.

TABLE 2.—PROFESSIONAL AND BUSINESS AFFILIATIONS OF FADA'S BOARD OF DIRECTORS

Board member	Affiliations of FADA board members
Barney R. Beeksma	Chairman of the board and CEO, Interwest Savings Bank, Oak Harbor, WA, 1988—Vice chairman, U.S. League of Savings Institutions, 1988; incoming chairman, U.S. League of Savings Institutions, 1989; president and CEO, Interwest Savings Bank, 1980–87; director, Interwest Savings Bank, 1973; and president, Interwest Savings Bank, 1970–87.
Richard Bertea	Director, Parker-Hannifin Corp., Cleveland, OH.
Edwin R. Biron	Chairman of the board and CEO, Commonwealth Federal Savings Bank, MA; member, Federal Savings and Loan Advisory Council, 1986–89; and director, U.S. League Board of Directors, 1978–80.
Thomas R. Bomar	Chairman of the board and CEO, Amerifirst Bank, FL, May 1986—President, Amerifirst Federal Savings and Loan Association, 1977–1986, renamed Amerifirst Bank, a Federal Savings Bank; chairman, Federal Home Loan Bank Board, 1973–75; member, Federal Savings and Loan Advisory Council, 1984–87; president, Federal Reserve Board Thrift Institutions Advisory Council, 1984; vice president, Federal Reserve Board Thrift Institutions Advisory Council, 1983; member, Federal Reserve Board Thrift Institutions Advisory Council, 1983–85; director, U.S. League Board of Directors, 1980–82; and executive vice president, Federal Home Loan Mortgage Corporation (Freddie Mac), 1970–73.
Gerald J. Levy	President, Guaranty Savings & Loans Association of Milwaukee, WI; ex officio member, Federal Savings and Loan Advisory Council, 1987; chairman, U.S. League of Savings Institutions, 1986; appointed member, Freddie Mac Advisory Committee, 1986; chairman, Wisconsin Savings and Loan League, 1977; and vice chairman, Wisconsin Savings and Loan League, 1976.
W. W. McAllister III	Chairman of the board and CEO, San Antonio Savings Association, Texas—Elected to the Executive Committee of the U.S. League of Savings Institutions, 1984–1987.
William F. McKenna	Chairman of the Board, FADA, 1985—chairman, Corporation Fund for Housing, 1984–85; chairman, Federal Savings and Loan Advisory Council, 1984–85; chaiman of the Board, Federal Home Loan Bank of San Francisco, 1982– ; chairman, The President's Commission on Housing, 1981–82; and partner emeritus, McKenna, Conner and Cuneo, law firm in Los Angeles, CA.
Gene E. Rice	President, First Federal Savings and Loan Association renamed MeraBank, a Federal Savings Bank, Arizona, 1973–87; CEO and chairman of the Board, MeraBank, 1982– ; director, Federal Home Loan Bank of San Francisco, 1981–85; director, Mountain States Telephone and Telegraph Co., 1979–86; president, American Savings and Loan Institute, 1969; and president, Arizona Savings and Loan League, 1967–68.
Donald B. Shackleford	Chairman of the Board and CEO, State Savings Bank, Columbus, OH; director, Federal Home Loan Bank of Cincinnati, 1986–88; chairman, Ohio Savings and Loan League, 1988; first vice chairman, Ohio Savings and Loan League, April 1987 through April 1988; second vice chairman, Ohio Savings and Loan League, April 1986 through April 1987; board of trustee, Ohio Savings and Loan League Board, 1981– ; chairman, Bank One of Cambridge, Ohio, 1972–1977; and president, Mid-Ohio Savings League Association,1976.
John B. Zellars	Acting CEO, FADA, October 15, 1987 to present; chairman of the Board and CEO, Georgia Federal Savings Bank, 1988– ; chairman, U.S. League of Savings Institutions, 1985.

FADA's initial interpretation of its mission

Based on our preliminary interviews with FADA senior officials, they too envisioned that FADA would be a small group of private-sector real estate experts in the areas of asset management and disposition. The group of experts was to enhance FSLIC's operations and liquidations functions in its management of institutions' assets in its role as receiver.

FADA eventually augmented its role by broadly interpreting its own charter. Thus, under the guidance of its charter, FADA expanded and became a separate entity with FSLIC-like functions and no accountability to FSLIC. Specifically, FADA's charter stipulates that FADA is under the direction of its board of directors, whose members are appointed by the Bank Board to serve staggered terms of appointment. As FADA's charter implies, only the industry and not FSLIC shall have any control or authority over FADA's activities.

From FADA's inception, its board of directors were unsure how the association should be structured. In the FADA board of director minutes dated December 3, 1986, FADA's board of directors identified two basic approaches which it believed could be used to structure the association. The board members described the approaches as follows:

"Under the first approach, FADA would be set up as a fully operating company that would actually take title to FSLIC's assets and use an in-house staff to liquidate them. The other approach would be to leave title to the assets where it currently lies and have an expert staff that would oversee contractors who would do the actual work."

FADA's board of directors adopted the latter approach because, as explained by the board members, "it [FADA] would utilize existing private companies and could become operational more quickly." It appears that the FADA board may have sacrificed a more efficient structure for a quick start-up of FADA.

The private sector's view of FADA

Full service asset management contractors who have successfully performed numerous management assignments for FSLIC are concerned that, "FADA should not be viewed as an alternative to private sector resources, but as a way to leverage those resources." However, since FADA's inception, contractors that have provided FSLIC with management services have been cast aside in favor of allowing FADA to become FSLIC's exclusive contractor. FADA, in turn, has "blackballed" these reputable contactors admitting that there is an inherent bias against the selection of firms that have previously done substantial work for the FSLIC. Also according to FADA staff, "FADA was set up to do things 'better' than the FSLIC and it would be difficult for us to explain the use of the same contractors which FSLIC has used."

Thus, it is the view of private sector contractors that FADA excludes experienced and highly qualified firms for political reasons and because it feels threatened. FADA has yet to request a proposal from some of the nation's leading firms and in fact, FADA staff told one firm that (see Attachment 1.2), "if [it] hoped to get work from FADA, [it] should make a point of repeatedly and personally soliciting FADA employees for work 'as many other firms do.'" The same firm also noted that, "there seems to be a considerable amount of favoritism as a result of the decentralized decision making process in the selection of work." Again FADA staff made it clear to private contractors that "it was necessary to develop friendships with the individual asset managers doling out the work."

As noted by one major contractor, "FADA was originally conceived as a master contractor to the FSLIC, composed of a highly skilled senior staff capable of effectively contracting with, managing, and supervising the resources available in the private sector. FADA was not intended to become a new massive quasi-governmental bureaucracy with hundreds of in-house employees attempting, by themselves, to manage the real estate problems of the industry."

FADA evolves as FSLIC's exclusive contractor

The general nature of statements regarding FADA's mission and objectives are evidenced time and time again in Chairman Gray's statements before various audiences, including the Subcommittee on Financial Institutions Supervision, Regulation and Insurance and the Subcommittee on Oversight and Investigations of the House Committee on Banking, Finance and Urban Affairs, in FADA's board of director minutes, and in discussions with FSLIC and FADA senior officials. Specifically, it appears that the Bank Board's and FSLIC's official statements, whether through omission or by intent, lacked precision and clarity in defining FADA's mission and objectives and in establishing the parameters within which FADA was to operate.

On March 12, 1986, Chairman Gray stated before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance that he was going to set the record straight to eliminate speculation and misinformation regarding the Bank Board's plan for FADA. Chairman Gray stated:

"Simply put, the FADA will be a nonexclusive contractor for management and disposition of FSLIC assets. While this function is now hampered by restraints on FSLIC staffing and resource allocation, creating of the FADA should dramatically change this situation. The FADA will be able to rapidly match hired talent to specific asset management problems, thus maximizing and accelerating the return of cost to the FSLIC."

In his statement before the Subcommittee, Chairman Gray portrayed a general mission for FADA without specifying its goals or objectives in assisting FSLIC in its liquidation function or without specifying FADA's accountability to FSLIC, which already maintained a liquidations group and asset management and disposition policies and procedures. Chairman Gray's statement refers to FADA as a nonexclusive contractor, which implies that FSLIC could use FADA's services as well as those of other contractors. What the Committee has seen to date, however, is the Bank Board requiring FSLIC to rely solely on FADA's services, often against the judgement and counsel of FSLIC's line officers.

Based on discussions with receivership personnel, the Committee learned that since FADA's first asset management contract on July 18, 1986, FADA has received every major contract from every FSLIC receivership. In addition, the Committee was informed that other assets that were already successfully being managed by receivership personnel or other subcontractors were reassigned to FADA.

During mid 1986 and early 1987 Roslyn Payne and FADA's board of directors constantly complained to the Bank Board about problems they were having with FSLIC and that receiverships should rely on FADA for asset management and advisory contracts. According to FSLIC's Acting Director, as presented in FADA's August 6, 1986 board of director minutes (see Attachment 1.3), ". . . the [FSLIC] staff had approached the relationship with FADA on the basis that the FSLIC has with all other contractors in the system and that it had taken the Chairman to correct that incorrect approach. Mr. Connell stated that he was optimistic that since the Chairman had

made it clear how he wished FADA to be utilized, the problems with the staff would be minimized."

On December 17, 1986, the Bank Board apparently re-emphasized the desire to make FADA work by issuing a directive stating that "For those assets under your jurisdiction in the capacity of Receiver, you are requested to take the following action: 1) Seek the advice of FADA with respect to the management, workout or disposition of each such asset(s), and 2) where appropriate after such consultation, enter into contracts for FADA to manage such troubled assets."

This directive was not received warmly by the FSLIC receiverships, which, at that time, were just beginning to familiarize themselves with FADA and become aware of its capabilities and performance. Before long, FSLIC receiverships' complaints about FADA's operational practices and its performance again filtered up to the office of the Bank Board chairman. The Bank Board was seriously concerned that FSLIC and its receiverships were not working with FADA.

Committee investigators understand that in early 1987 the Bank Board's chief of staff made field visits to several FSLIC receiverships to determine the reason for their lack of compliance with the stated directives. Soon after these visits were made the Bank Board established the FSLIC Restructuring Task Force.

The Bank Board charged FSLIC's Restructuring Task Force with two goals. Namely, "to assure effectiveness and cost-efficiency in the management and disposition of assets that FSLIC, in its corporate and Receivership capacities, acquires" and, more importantly, "to ascertain which functions may be transferred to other entities, including the Federal Asset Disposition Association."

The use of the FSLIC Restructuring Task Force was yet another attempt by the Bank Board to satisfy FADA's board of directors and require FSLIC to rely solely on FADA services. As presented in FADA's March 2, 1987 board minutes ". . . Several members of the [FADA] board expressed the opinion to the Bank Board Members that every effort should be made to carefully analyze all assets assigned to third party contractors to ensure that their performance was satisfactory and if it was not to reassign assets to FADA."

On March 16, 1987, the task force concluded that "FSLIC must continually evaluate contractor performance, and weigh the effectiveness of services provided against the costs associated with obtaining such services." The Task Force did not acknowledge FSLIC's authority over FADA, it acknowledged the importance of FSLIC's responsibility to evaluate the performance of its current subcontractors and if deemed unacceptable the assets under their control should be transferred to FADA.

Not long after the release of FSLIC's Restructuring Task Force report, FSLIC's director on March 26, 1987, issued a new policy directive. The purpose of this directive was an attempt to clarify Chairman Gray's previous directives. According to the FSLIC director, in discussions held with the Bank Board's chief of staff, the Bank Board still required that "FADA should assist FSLIC in every manner possible, and that FADA should be given every opportunity to perform such services until its staffing and resources limitations were reached." In fact, FSLIC staff were required to re-evaluate their portfolios in an effort to assign more assets to FADA.

The Bank Board's actions clearly reflect the influence of the FADA board of directors. In spite of the numerous and serious concerns raised throughout FSLIC and the receiverships, the Bank Board seemed committed to guaranteeing FADA's existence and expansion.

Bank Board Chairman M. Danny Wall has reiterated the general, all encompassing statements regarding FADA's mission and objectives. In testimony during the October 15, 1987, hearing on FADA before the Subcommittee on Financial Institutions, Chairman Wall stated that:

"The sole purpose of FADA is to assist in the strengthening of the financial health of FSLIC by using private sector management and marketing techniques to manage problem assets in the FSLIC at the lowest cost consistent with sound operations and to sell these assets as fast as is consistent with obtaining the best possible return to FSLIC and its Receiverships."

Unfortunately, Chairman Wall's statement neither clarified FADA's mission and objectives nor addressed FADA's structure, FADA's intended operations, or the relationship between FSLIC and FADA in terms of accountability and authority.

Also, he did not address how FADA's techniques were different from FSLIC's well-established asset management and marketing techniques. Furthermore, Chairman Wall was unable to clearly defend the reason for establishing a separate private-sector bureaucratic entity which appears to have minimal ties to FSLIC and the Bank Board.

CHAPTER IV—FADA'S INEFFECTIVENESS IN ITS ASSET MANAGEMENT FUNCTION

As discussed earlier, the Bank Board created FADA, as one of a number of outside contractors, to assist FSLIC in the management and disposition of troubled assets. FADA engages in three types of contracts: (1) an asset management agreement with the FSLIC as receiver, (2) an asset advisory agreement with management consignment program institutions or other financially troubled institutions with FSLIC's approval, and (3) an agreement with FSLIC to provide advisory/consulting services. FADA's objective asserted in its November Business Plan Update is to "obtain the best return to FSLIC on a net present value basis. The hallmark of our efforts has been to devise flexible, creative solutions to problem situations which typically defy traditional, formalistic solutions."

Thus far, FADA—which has insisted on serving as FSLIC's major contractor—has done a less than inspiring job. This group of "private-sector experts" appears incapable of performing even the most ordinary tasks necessary to effectively manage an asset. FADA's business plans are of poor quality and are submitted in an untimely manner. FADA's laxness in its management responsibilities has resulted in financial losses to FSLIC receiverships. FADA's neglecting to protect and maintain receivership properties has resulted in financial losses, potential liability claims, excessive insurance premiums, and tax penalties. FADA has exhibited poor performance, incurred excessive expenses, and has been uncooperative in working with participants.

FADA's business plans are untimely and of poor quality

FSLIC requires its asset managers (including FADA managers) to produce preliminary business plans and asset business plans in order to provide summaries on the background, current management, and future strategies for disposing of an asset. The preliminary business plan provides a "snapshot" look at an asset as of the date of closure and also provides preliminary recommendations on managing and disposing of the asset. The asset business plan, or the "finalized" plan, analyzes the asset and develops and recommends strategies for the management and timely disposition of the asset for the highest return to FSLIC. The preliminary business plan and the asset business plan must be submitted to the appropriate FSLIC receivership within 30 days and 90 days, respectively, from date of assignment. After the plans are submitted, the managing officer of the receivership can approve all plans under $500,000. Plans over $500,000 are approved by a local/regional review committee, while all plans in excess of $5,000,000 are approved at the national review committee meetings. At both the regional and national review committee meetings, receivership and FADA personnel, along with the contractors responsible for producing the plans, are required to present their plans and answer any questions from FSLIC senior management.

Without these plans, the receiver has no effective control and is unable to: (1) Assess its borrowing requirement, (2) accurately project repayment of loans by FSLIC, (3) estimate liquidating dividends for distribution, or (4) ascertain if FADA is effectively managing its assets. FADA, in almost all cases, has contracted out the preparation of preliminary and asset business plans. FADA's reliance on contracting services has resulted in a lack of managerial oversight of subcontractors, untrained subcontractors, and a lack of quality control.

During the Committee's investigation, numerous senior FSLIC officials expressed their concern regarding the preparation and submission of FADA's business plan. In one memo, a FSLIC official noted that (see Attachment 2.1):

"FADA, although they are purported to be industry experts in asset management, are not doing the work themselves. Instead they have hired many layers of subcontractors to perform the management of the asset. I [the FSLIC official] gave a Net Realizable Value seminar to FADA subcontractors at FADA's request. There were approximately 70-100 subcontractors present who had been hired to prepare FINAL business plans for submission in ten days, but these same contractors had not even been provided the names of the assets they were to manage much less the files on those assets. I seriously question the quality of business plans that will be created in 10 days with little or no information at the start of that short time period."

In fact, Committee investigators have learned of numerous problems regarding the quality and timeliness of FADA's business plans. The following examples relate to FADA activities in the Sunrise Savings and Loan receivership. On September 12, 1986, the Bank Board closed Sunrise Savings and Loan in Boynton Beach, Florida. Shortly after FSLIC was appointed receiver, it transferred assets in excess of $600 million to FADA. Three months later, FADA had submitted no plans, preliminary or final. Although FADA may claim that the required time limis may be somewhat unrealistic, the receiver, during the same time period, submitted and obtained approval of approximately 80 preliminary business plans and two asset business plans. It should also be noted that the receiver's responsibilities extend beyond merely managing a portfolio

of assets, whereas this is FADA's sole function. Even a year after the assignment of Sunrise assets, FADA had only submitted 38 business plans. To make matters worse, FSLIC required FADA to withdraw 11 out of the 38 asset business plans due to poor quality. As a result, FSLIC staff spent hours correcting deficiencies in FADA's business plans.

The Sunrise portfolio was placed in liquidation on September 12, 1986, and, as of July 1987, FADA had not completed many asset business plans because they had not ordered appraisals. According to a FSLIC official, FADA is responsible for ordering and receiving appraisals in a timely manner. However, FADA did not order a substantial number of appraisals until several months after takeover.

FADA's lack of quality control in the preparation of its business plans is a common occurrence. A typical scenario regarding FADA's deficient business plans is illustrated in the following case.

Villa Venezia apartments located in Delray Beach, Florida

In this case, FADA submitted two versions of an asset business plan, only to have them both rejected by FSLIC's review committee. FADA's plan submitted in May 1987 contained numerous technical errors and an incorrectly calculated net realizable value (NRV) rate, which is the estimated maximum recoverable value of an asset. Additionally, the plan omitted property-related expenses that were incurred on assets transferred to FADA immediately after takeover, contained an inappropriate summary of holding costs, and incorrectly calculated FADA's management fee as $6,200 when it should have been $2,411, along with other technical mistakes. The revised asset business plan addressed these issues and was resubmitted only to be rejected again. According to the receivership's review committee, it rejected FADA's business plan due to FADA's failure to analyze the property from a rental standpoint and because the appraisal FADA submitted did not conform to appraisal regulations.

The Committee's review of several other FADA business plans revealed that FADA frequently overestimated its fees. In three cases, FADA overcharged the receivership a total of $12,000. FADA's response to these inaccuracies in the calculations of its fees is that to correct these calculations is "an imprudent use of time and effort, unrelated to the goal of asset disposition." As evidenced by its response to FSLIC, FADA appears to consider cost savings a low priority, thus displaying its unwillingness to share the FSLIC receiverships' fiduciary responsibility.

To understand the importance and significance of FADA's role in assuming FSLIC's fiduciary responsibility, one must understand that fiduciary responsibility is a very serious facet of the receivers duties to its creditors, those individuals to whom it owes money from liquidating assets of troubled and failed institutions. According to FSLIC, the term fiduciary means "someone who is entrusted with the care of another person's money, property or other items of value." Thus, an abridgement of such responsibility arises due to negligence or malfeasance, and, in FADA's case, it appears to consider such responsibility lightly, if at all.

FADA's laxness in management responsibilities

FADA's laxness in its management responsibilities has resulted in a clear financial loss to the receiverships. Although FADA was responsible for managing assets and billed receiverships its full asset management fees, receivership personnel actually performed many of FADA's asset management responsibilities. Receivership personnel believed it was necessary to assume FADA's responsibilities because FADA had neglected to fulfill its basic management duties. (see Attachment 2.2)

One such case is the *Boynton Trail Shopping Center* in Boynton Beach, Florida. This center was approximately 80 percent complete at the time of takeover on September 12, 1986, with an estimated value of $18 to $20 million. As of February 1987, the center was 100 percent complete with the only remaining improvements being activities relating to completing tenant occupancy. Receivership employees continued to direct and oversee the construction of the office center for five months after the assignment of the asset to FADA. FADA has stated that it saw no point in changing the receivership's management construction team, Sun-Op, since it had been so involved in the project. Thus, FADA had no input into the management of this project while under construction, but still collected its fee.

After the office center was completed, the receivership continued to manage the property and received a firm purchase offer on the center. Since it appeared that FADA was not involved in the managing of the property, and due to the receivership already having the asset under control, the receivership requested that this asset be removed from FADA's control. In defense of its position, FADA argued that:

From a marketing standpoint, FADA intended to include this asset in a package deal;

From a management standpoint, FADA believed that Sun-Op, (the receivership's management company) had been making poor management decisions and that Terranova, a management contractor that FADA deemed as an expert in the field, should take over, and lastly;

From a legal standpoint, Mr. William Frederick, the former owner of several defunct construction loans secured by shopping centers, including Boynton Beach, held repurchase options, and as long as there might be cause for litigation, these assets should remain together.

FADA's responses are somewhat ironic and yet typical of FADA concepts. The fact that a purchase offer existed on the asset does not prevent FADA from wanting its own way. In contrast to proceeding with a speedy recovery process on the asset, FADA wanted to use Boynton Trail as one of its test marketing concepts which, at that point, was not even fully developed. Unfortunately for FSLIC, FADA was provided the opportunity to dispose of the asset under its new concept. To date, this asset has not been sold and FADA continues to collect its management fees.

In addition, FADA seems to be concerned about the management capabilities of Sun-Op, FSLIC's management contractor. However, in response to allegations that the receivership's subcontractors were assuming responsibility for all of FADA's work, FADA not only agreed but went as far as to say that in several asset cases "Sun-Op has done a thorough job." FADA's concern with Sun-Op was that the receivership's management subcontractor performs well yet is inept in fulfilling its duties.

FADA, however, did little to resolve this concern. After attending initial meetings regarding the project, FADA's attendance tapered off quickly, resulting in the receivership assuming the responsibility of completing the construction, negotiating with the general contractor and subcontractors, negotiating new leases and resolving problems with tenants, obtaining certificates of occupancy, paving the parking lot, maintaining security on the premises, and numerous other efforts associated with the opening of a shopping center. According to a FSLIC official, in order to accomplish the tasks mentioned above, the receivership devoted the equivalent of three full-time employees to the ongoing management of the asset.

In addition to the numerous management activities FSLIC engaged in, the project required that a $1.65 million letter of credit be funded in order to preserve its value. FADA assured FSLIC that the funding would be accomplished but, two days before the funding was required, FADA requested that the receivership honor the letter. As a result, the receivership provided funding for the project.

Although FADA believed Sun-Op to be inept in its management, the tenants of the Boynton Trail Shopping Center appeared to have more difficulties with Terranova, the third-party contractor FADA eventually contracted to manage the asset. In one case, the Brent Tree Water Management Association, Inc., adjacent to the Boynton Trail Shopping Center, wrote several letters regarding the erosion and washouts of its canal embankments due to the shopping center's defective drainage system. In a letter dated May 11, 1987, written after several months of discussions, Mr. Armbruster, President of Brent Tree, wrote to FADA's Atlanta office that "recent attempts to resolve this matter through the plaza manager, Terranova, have failed. During past negotiations with Sun-Op and FSLIC officials it appeared that a resolution was in sight." The letter also referred to FADA's unresponsiveness to Mr. Armbruster's previous letters.

In another case, shopping center tenant, Winn Dixie grocery store, wrote about several problems which, if not corrected, would result in the shopping center's delayed opening. Terranova seemed to have difficulty correcting the situation and, as a result, the receivership's personnel ended up negotiating with the general contractor, the subcontractors, the various agencies, and Winn Dixie representatives to resolve the problems. Due to the receivership's responsiveness, Winn Dixie opened on time.

By far, the aforementioned case is not unique. The Committee investigation has revealed that, on a regular basis, the receiverships have taken numerous administrative actions to assist this group of "private-sector experts" by performing their management duties. In some of other cases, receiverships provided office space for FADA's staff located in its Houston office, supplied furniture for FADA's Florida office, installed a Kodak copier at FADA's request, and loaned receivership employees to help FADA market its real estate. In addition, the receivership agreed to a deviation from the asset management agreement by performing property management services on FADA assets for a 120-day period since FADA was not equipped or staffed to perform this duty as called for in the agreement. When this period expired, FADA requested an extension from the receivership.

Another concern raised by FSLIC officials was that fees paid to FADA for the management of raw land could be substantially re-

duced by the use of inhouse management staff. Over one-third of the total value of FADA's property consists of land. Most of this land is located in Texas, where the market has deteriorated to the point of almost no value being added through the use of asset management contractors and subcontractors. Although the Texas market is in bad shape, FADA appears to want to hold this land and continue to bill the receiverships for management fees and subcontractor fees and, when the economy is better, to sell the land at a higher value and bill the receiverships for a higher disposition fee. FADA has demonstrated its unwillingness to sell its raw land by not responding to inquiries by potential buyers and by not conducting any marketing activities. In some cases, FSLIC has even had to assume responsibility for selling the land because it was afraid that FADA's inactivity would result in the loss of the purchase offer. For example:

"Two hundred acres in Denton County located just north of Dallas

"The FSLIC receivership assumed marketing responsibility for this asset by acting as a broker between FADA and the potential purchasers. Subsequently, FSLIC opened the asset for bids and was successful in selling for cash. FSLIC assumed these responsibilities because FADA was not responding to inquiries. FADA had placed several different asset managers on the project which created confusion on the transactions occurring on the property, and yet, FADA billed the receivership its full management fee and for subcontracting fees."

The bottom line appears to be that the receiverships are not only performing substantially all the work by having to supply FADA with resources to fulfill its asset management and disposition functions, but the receiverships are also forced to pay for third-party subcontractor fees in addition to FADA's management fee. This clearly demonstrates an operational and financial burden to the receiverships.

FADA has also performed activities on assets that are not under FADA's authority, which has resulted in a duplication of effort and unnecessary expenses for the receivership. FADA requested access to the files and records and selected a property manager for an asset assigned to the receiver. In another case, FADA also sought and received bids for a construction assignment on an asset controlled by a receivership. The receivership, however, had already secured a construction contract on the asset. Both of these cases reflect duplicative effort and resulted in the receivership incurring additional expenses due to the bills arising from FADA's unnecessary management activities.

In addition, FADA presented a position paper recommending a $4.6 million sale of an asset consisting of unimproved raw land, while at the same time, FADA's subcontractor, Vector Land Associates, submitted a business plan with a recommendation to sell the land for $3.1 million. Not only does this type of behavior reflect poor communication between FADA and one of its subcontractors, but it also evidences that duplicative efforts can result in gross cost inefficiencies, both representing weaknesses which undermine the need for FADA's private-sector expertise and management.

The aforementioned examples of FADA's difficulties in producing quality and timely business plans along with the delays in performing its asset management activities and the receiverships constantly subsidizing FADA with their staff resources to assist it in its asset management functions had demonstrated to FSLIC that problems exist. To address the various problems, FSLIC personnel suggested that a team of FSLIC/FADA employees be established to review FADA business plans and, thus, provide better oversight on the preparation and presentation of business plans and foster an improved relationship between the two organizations.

Although FADA offered no alternatives, it refused FSLIC's attempt for coordinating the business plan reviews. A senior FADA Vice President commented that the "plans don't really need review and [FSLIC] approval because they have been extensively reviewed within FADA." While FADA claims to extensively review its own business plans, Committee investigators have not seen any documentation supporting FADA's review process.

One FSLIC official stated that, in his opinion, "the greatest problem with FADA today, is that FADA has refused to attend the national review committee meetings with FSLIC and it is impossible to approve the plans without having FADA there to answer questions concerning the plans." He continued to say that the asset business plan review system for FADA is "broken" and needs to be "fixed". The same FSLIC official went on to state that FADA was formed for its real estate and management expertise and that this type of expertise is needed in the review process.

It seems that FADA is willing to contract out the preparation of both preliminary and asset business plans and charge the receiverships a fee for the oversight and management of the plan, but it is unwilling to be held accountable for its business plans. Clearly FADA appears to take the responsibility and importance of business plans lightly. The taxpayers' money is wasted if FADA cannot perform at least on par with FSLIC's receivership personnel or the contractors being used by FSLIC. Some critics have suggested that if FADA does not demonstrate the ability to produce, review, or simply present its business plans at the review committee meetings, then its management fees should be withheld.

FADA's negligence in managing insurance and taxes

FADA not only has exhibited poor management of assets through untimely and poor quality business plans but also has (1) neglected to secure properties which resulted in financial losses and potential liability claims for receiverships, (2) failed to inform FSLIC of insurance claims/incidents until FSLIC made repeated requests, which in several instances resulted in the receiverships carrying assets without insurance coverage, and (3) incurred excessive insurance premiums and taxes to protect assets in which receiverships had potentially no equity. The gravity of the situation is evidenced in one receivership official's consideration whether to continue its contract with FADA due to FADA's failure to adequately manage insurance and tax matters. (See Attachment 2.3)

Based on a review of FADA's performance regarding insurance and taxes, Committee investigators identified numerous instances in which FADA violated receivership procedures and caused receiverships to incur insurance losses or jeopardized the insurance coverage of receiverships' assets. The following examples within the Sunrise Receivership reflect those situations which the Committee considers the most flagrant violations. FADA acquired most of the assets from Sunrise on September 12, 1986, the date the Bank Board declared the institution insolvent and closed its doors. According to the FSLIC risk manager, large dollar losses occurred on various assets due to FADA's negligence in filing insurance claims in a timely fashion, and large dollar losses may result due to potential lawsuits.

After repeated contacts with FADA, in a September 9, 1987 memorandum, the FSLIC risk manager for the Sunrise Receivership notified the managing officer of the receivership that properties and assets assigned to FADA were not being appropriately protected or maintained. The Committee has reviewed some cases where FADA's failure to protect and maintain properties has led to theft, vandalism, structural damage, potential personal injury claims, and a resulting loss of value. As a result of FADA's inaction on these properties, the receiverships incurred losses from $3,000 to over $370,000. In addition to these losses, the receiverships are subject to contingent losses based upon potential lawsuits. According to the FSLIC risk manager, large dollar losses and potential liability claims resulted from FADA's negligence on assets, such as the following examples:

"For at least 5½ months FADA failed to adequately secure and weatherproof *Jogger's Run*, a townhouse development in Greenacres, Florida. In addition, FADA failed to report a theft loss until 3 months after the incident. As a result of FADA's neglect, the property incurred significant water damage and vandalism valued at $372,111. Furthermore, due to the property's exposure to the elements for 5½ months, FSLIC had to devalue the property by a significant amount.

"Although FADA was notified of the potential danger of property under its care, FADA chose to ignore letters requesting that the *Yardarm Restaurant* in Pompano, Florida, be secured from entry. Consequently, an individual gained access to the grounds resulting in a serious accident. Had FADA been more responsive in this matter, the accident may have been prevented."

FADA, in its June 30, 1987, Business Plan Update, also reports that it has initiated numerous insurance programs "to control property insurance costs and ensure adequate protection for receivership assets from property and liability risks." However, as supported by the various aforementioned insurance cases, FADA has mismanaged the insurance coverage on many assets. Regarding a participation loan, FADA charged the receivership excessive insurance premiums for an asset with a potential return value of zero. Only after the receivership pressured FADA to renegotiate the insurance policies did the receivership realize savings of $227,000.

In addition to FSLIC receiverships contesting FADA's management of the insurance coverge on assets, receiverships have had to continually remind FADA of procedures which state that "serious losses should be phoned in immediately with a written report to follow." The receiverships' policy "requires the insured to give immediate written notice of loss and to protect the property from further damage and furnish amount of loss claimed." As documented in the previous insurance cases, it appears that FADA behaved irresponsibly by either not filing insurance claims or filing them late.

In addition to FSLIC receiverships maintaining policies and procedures regarding risk analysis and identification and the filing of insurance claims, FADA has devel-

oped and utilized its own set of policies and procedures. According to FADA's Risk Management Department, it is responsible for the overall direction of its insurance management programs and also for serving FSLIC and FSLIC receiverships in an advisory capacity on all assets.

In carrying out its insurance responsibilities, the Committee is aware of FADA working to obtain insurance policies to cover entire asset portfolios and, perhaps, assets throughout the country. In discussions with FSLIC receivership officials Committee investigators learned of FADA's push to use a Texas-based insurance company, Unimark, to insure all the assets at one of FSLIC's receiverships. While it is not unusual for asset management companies to use insurance companies for entire asset portfolios, the problem was that under such arrangements as proposed by FADA, the insurance costs were considerably higher than under the insurance arrangements already under contract.

Although a FSLIC receivership was entertaining a new insurance proposal to cover all of the receivership's assets, including those managed by FADA, and already maintained insurance coverage on its asset portfolio, FADA contracted out with Unimark to provide the same insurance coverage. Committee investigators understand, however, that the Unimark proposal was not better than the Coroon and Black coverage already in place or the new Coroon and Black proposal being entertained by the receivership. According to a memo prepared by a receivership official and forwarded to FSLIC's deputy director, "All parties in attendance were in agreement that the proposals of Coroon and Black were far better than the coverage in place and were superior to any other coverage known available, including the Unimark program."

Nonetheless, Committee investigators were informed that FADA officials awarded Unimark the contract without providing the receivership with any information regarding competitive bidding quotes on insurance coverage. Furthermore, the FADA official working with receivership officials advised them that he was familiar with all coverage provided to FSLIC by Coroon and Black, and none of the existing programs could compare to the Unimark proposal.

In addition to its claims of saving FSLIC money through its insurance programs, FADA also claims that it "saves a significant amount of money" by protesting and revaluing tax assessments based on erroneous property values and, thus, successfully revalues property taxes. Although FADA purports to save FSLIC money, Committee investigators found that many receiverships were incurring additional expenses due to FADA's inattentiveness to tax aspects of property management. For example, in one receivership, FADA paid the taxes late, thus incurring penalties totaling $192,822 for the receivership. Also, FADA engaged a real estate tax service (RETS) company to handle tax appeals at a cost in excess of $50,000 for 150 properties. Of these 150 properties, only 66 represented properties needing tax services because many of the 150 properties represented duplicate cases, were sold prior to contract date, or were not real estate assets. Consequently, the receivership was incurring expenses for properties which did not need tax appeal work.

Officials at the First South Receivership in Arkansas said they experienced attitudes of uncooperativeness and apathy from FADA's professional staff while working with FADA to manage the taxes and insurance on its assets. For example, when the First South Receivership was initially established, FSLIC recommended that FADA and FSLIC work together on tax matters due to FSLIC's significant expertise in the area. For whatever reasons though, FADA rejected the offer. After FADA began handling the tax matters, it showed little or no concern over whether or not receiverships incurred penalties or met deadlines. Additionally, FSLIC encountered difficulties in reaching FADA, and, when it did, FADA often did not answer questions or provide information regarding appraisal information necessary in preparing the tax data. FADA's uncooperativeness caused receiverships to incur penalties which would have resulted in additional and more severe tax penalties had it not been for FSLIC's presistence in making the payments in a timely fashion. This meant that the receivership had to spend a considerable amount of time in monitoring these assets and communicating with taxing authorities on FADA's behalf, yet FADA continued to receive its management fees.

In at least one case, FADA suggested that the receiver pay taxes to protect an asset in which the receiver had no equity. The *Sterling Inn,* an acquisition development and construction loan located in Lake Tahoe, California, holds little or no equity. The equity of the lead lender in this participation loan was eradicated due to the significant liens against the asset, thus there was no need to protect the asset. FADA's asset manager, however, requested that FSLIC pay approximately $45,000 in taxes when no financial resources should have been expended as the asset had no value.

FADA's ineffectiveness in participation loan management

FADA boasts of its expertise in managing participation loans, loans in which a number of financial institutions have a share, in such areas as management, loan workout settlements, and ultimate disposition. Even Chairman Wall, in his opening statement before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance on October 15, 1987, said that he believed it was important "to identify where some of the strengths and some of the bright lights are as far as the function of FADA, and one of the specific areas that is going to come to be understood and recognized throughout the country, whether the country or that sector of the country is in an area of real estate difficulty or not, and that is in the area of participation loans because participation loans and participation in loans in the growth areas of the country, typically the Sun Belt, have been undertaken by institutions all throughout the country."

Committee investigators, however, heard FSLIC officials and FSLIC receivership officials relay experiences quite contrary to FADA's and Chairman Wall's statements. Participants found FADA's participation expertise less than a recognizable strength and, in some cases, that they had no alternative but to release FADA from their participation agreements.

Participation loans by definition are a less than easy concept to understand as variations in participations can be as numerous as the number of participations across the country, given that there is no standard participation agreement. In defining participation loans, FADA's Business Plan Update of June 30, 1987, indicates that the term "participation loan" means any loan wherein the originating lender, otherwise called the "lead lender," sells participation interests in the loan to other lenders, also known as "participants".

Many savings and loans institutions, having found participation loans relatively easy and quick investment instruments with considerable upfront fees, engaged in more participation loans during the 1980's than ever before. Of these institutions, many became insolvent during this time and were closed by FSLIC. Since many of the troubled assets requiring liquidation included participation loans, FSLIC receiverships began developing expertise in this area. Consequently, participation loans are not a new animal to FSLIC receiverships, which established policies and procedures to deal with participants and participation loans early in this decade.

FADA also informed Committee investigators that it maintains a nationwide data base which tracks about 650 participation projects valued at $5.1 billion. However, FADA was not the first to have this idea, rather the district banks and FSLIC receiverships suggested that the FSLIC director establish a Nationwide Problem Participation Loan Task Force to institute policies and procedures regarding participation for the Federal Home Loan Bank system.

Thus, all of FADA's accomplishments have not been due to its own ingenuity, for it was FSLIC which engaged FADA as a consultant to the task force to provide its input in the area of participation loans policies and procedures. In addition, it was a FSLIC receivership director and his staff who provided the data base elements and structure to FADA for its development of the Nationwide Problem Participation data base. Based on the Committee investigators' review, FADA has exhibited poor performance, incurred excessive expenditures, and has been uncooperative in working with participants. Thus, FADA has not acted in the best interest of FSLIC.

The first case of prominent concern to the Committee, Reverchon Plaza in Dallas, Texas, an asset of FSLIC as receiver for Sun Savings and Loan Association (Sun), involved six participants. After Sun's failure on July 18, 1986, the Reverchon Plaza asset continued to be efficiently and effectively managed by the Sweringen Company, a FSLIC contractor. Meanwhile, FSLIC officials during late 1986, and early 1987, with encouragement from the Bank Board to turn assets over to FADA, convinced the Sun Receivership to relinquish its partial interest in the asset to FADA. In October 1986, FADA began managing the asset and delivered a business plan on January 1, 1987.

According to Committee sources, "FADA presented the Board with a three-volume business plan full of information that nobody near Dallas believes." Specifically, the participants had several problems with the business plan. One FSLIC official noted the participants as saying, "the problem was that the business plan was like a thesis and was expensive with no realistic solutions." The Committee understands that the business plan recommended holding the asset for five years and projected its value to be $97 million by 1990. Based on FADA's projection, the asset's current net realizable value of $28 million would have to increase by nearly 300 percent. This seems almost impossible given economic conditions and current efforts to market the property. In a FSLIC official's words, "Through March 1987, nothing had been leased. No progress

had been made on the asset." In addition to the unreasonable business plan, FADA has lavishly expended the receivership's financial resources in efforts to market the asset.

FADA accumulated $450,000 in expenses in the early stages of its asset management activities of the Reverchon asset. Approximately $240,000 of this amount went to an image consulting company in an attempt to create Reverchon Plaza as its "showpiece." This effort included spending $26,000 on an extravagant evening to entice brokers to take some interest in the project. On yet another extravagant occasion, FADA hosted the participants to a $750 lunch in Dallas. In addition to being appalled by FADA's extreme expenditures to market the asset, the participants also questioned FADA's use of in-house counsel and outside paid counsel when, only a few months into their engagement, FADA had run up $180,000 in legal fees.

Displeased with FADA's mismanagement and performance, the participants, during March 1987, offered FADA an ultimatum which basically gave FADA the choice of (1) eliminating its contract, or (2) reworking the current agreement to place one of FADA's asset managers in an advisory capacity to the participants at a basic fee of $1,500 per month. According to Committee sources, FADA accepted the latter option in order to avoid bad press and to refrain from harming its relations with FSLIC, the Bank Board, and Sun's FSLIC receivership.

Committee investigators were further informed that not until October 22, 1987, did the participants begin to phase out FADA contract acknowledging that the problems were due to FADA's poor performance and lack of expertise, especially in the area of participation loans. At that time, the participants relied on FADA minimally, as demonstrated through FADA's use of one FADA staff person in an advisory capacity while using the Sweringen Company to manage, market, and dispose of the asset. In the opinions of a receivership official and an attorney who worked on this case, FADA lacked the technical knowledge necessary for understanding participation loans and the interpersonal skills necessary to negotiate with participants and present the option in the participants' best interest.

Another cause of concern to the Committee involves a participation loan in FADA's caseload at Vernon Federal Savings Association. Huntington Savings and Loan of Huntington Beach, California (Huntington) is a participant in the loan. From March to October of 1987, Huntington requested information from FADA on the status of the asset, including the collection of rents, yet it received no response. In fact, when the participants contacted their FADA representative to request that FADA appoint a receiver to collect rents on the asset, they were told to place their request in writing. Even after the participants wrote and the Vernon board approved the appointment of a receiver to collect rents, FADA never appointed a receiver. Committee investigators understand that FADA allowed the borrower to continue managing the asset and collect the rents.

Huntington's Vice President of the Loan Division was concerned that FADA allowed the borrower to collect the rents without any financial accountability. It appeared that the borrower was receiving more than enough rent monies to cover the cost of maintenance and was not applying the balance of the rent collections to the outstanding loan principal. Again, after repeated requests from Huntington for information on the asset's operations, FADA refused to provide the participants with any significant data.

Huntington is entitled to this data as a participant that must also carry this loan on its books. Additionally, status reports on this asset must be provided to the San Francisco District Bank as part of its examination process.

In November 1987, Huntington's Vice President of the Loan Division wrote to FADA, again expressing his displeasure with the way FADA handled this loan. Not only had the participants been given the runaround, but FADA had continuously reassigned managers to this project. FADA, while allowing the borrower to collect rents, attempted to negotiate a deal with the borrower who had numerous complex loans in Vernon. In addition, in late September 1987, FADA hired a consultant to perform a very limited review of the asset's operating account and, although the consultants were not qualified to perform a full audit, they felt an operating agreement was needed in order to establish guidelines under which the borrower would have to operate. Huntington's Vice President noted that:

"The non-performance by FADA is proof that it has no regard for the rights of the participants."

"FADA's inactions have put its participants in jeopardy with no reasonable alternative."

"Although FADA has the impression that it is immune from actions by others, perhaps the publicity of a lawsuit in a situation like this will open some eyes."

It was only after this letter that FADA agreed to send Huntington updated information on the asset's operations, a copy of the contract which FADA was attempting to work out with the borrower, and an updated appraisal if Huntington was willing to purchase a copy of the appraisal for a thousand dollars. As with previous participation loans, FADA's restructuring negotiations were not successful and it posted foreclosure on this asset in late December, 1987.

This case, as with that of Reverchon Plaza, reflects FADA's lack of participation expertise and FADA's poor management of participation loans. FADA's inability to effectively manage this participation loan and to conduct itself in a professional business manner is reflected in this case by not providing the participants, the lender, and the San Francisco District Bank with standard status reports and requested information and by allowing the situation to go unmonitored, thus creating significant difficulties in an already difficult situation.

CHAPTER V—FADA'S INEFFECTIVENESS IN ITS MARKETING FUNCTION

In order to become a successful asset disposition association, FADA needs a quality marketing program; FADA does not appear to share this view. Since its inception in November 1985, FADA has placed little or no emphasis on the development of a quality marketing program. Despite the knowledge that FADA was going to manage a significant amount of assets, the vice president did not concentrate on developing a marketing plan to implement throughout the FADA regional offices.

As a result of criticisms and concerns regarding FADA's performance, in December 1987 FADA restructured its organization and Mark Plumley, the Vice President for Marketing, was reassigned to a position to handle Committee information requests, among other responsibilities. FADA apparently has not deemed the marketing function important so, it eliminated the position of Vice President for Marketing. The significance FADA has placed on the marketing function has resulted in an inadequate marketing program. This program is supported by an inept marketing brochure, a nonstandardized marketing policy among the regional offices, and a long list of frustrated potential buyers.

Although FADA was assigned its first assets in July 1986, FADA did not present its marketing program to FSLIC until July 1987. This lack of a developed cohesive marketing program unfortunately has had a significant impact on returns to FSLIC. According to FADA's September 30, 1987, Business Plan Update, FADA has closed sales and paid off loans on only 64 assets at a value of $175 million from a total asset portfolio valued at over $5 billion. FADA's meager contribution towards FSLIC's goal of disposing of assets comes as no surprise upon review of FADA's ineffective marketing performance.

FADA displays mediocre marketing techniques

The first thing a person does when he or she wants to sell something is to advertise. The better the advertising, the better the chance of selling at a good price. Normally, brokers and realtors accomplish this goal through the development and distribution of property brochures. Presumably, FADA's private-sector experts would utilize this technique since they are able to purchase the best expertise "money can buy." No so. FADA's sole marketing information, its version of a marketing brochure, was not developed until May 1987. This marketing summary, referred to as the "Property Summary", is inadequate and useless. (see Attachment 3.1) The document consists of

—One and one-half pages of introductions,

—One and one-half pages of disclaimers,

—One page each of four property exhibits, and

—A one page prequalification sheet.

Most of the information contained in the piece is not directed at or related to the asset. Each property page has a plain, nondescript, nondetailed map with a black box to denote the property. In comparison, FSLIC, in one regional office, has a 40-page semi-glossy brochure depicting over 400 assets with color photographs and information pertaining to the location, property description, asking price, zoning, and type of asset available. However, the FADA "brochure" was so mediocre and futile that FADA went back to the drawing board to come up with a better piece.

In early December 1987, FADA released a property list containing 191 properties. This time, FADA did not even include maps or any type of location descriptions. The document consisted of approximately 60 pages stapled together. On the first page the following information is found:

"This list may not be complete. FADA does not represent that all of the properties in this List are now available for sale or will be available for sale in the future. FADA reserves the right to withdraw any property from this List at any time, without notice, and for any reason. FADA makes no representation as to the accuracy or completeness of the information in this List, and it is not guaranteed. The information contained in this List is subject to change, and all areas and distances are approximate. The List has been prepared for the exclusive use of FADA and persons and entities to whom

FADA makes it available. It is and remains the property of FADA, and any reproduction of the whole or any portion without the written permission of FADA is prohibited. This List and all copies shall be returned to FADA upon demand.

"Prices may be established in the future and may be indicated in a future property List.

"Copyright—December 1987—FADA. All rights Reserved. These materials may not be reproduced without the written permission of the FADA."

The Committee has heard from several realtors and brokers who have expressed doubts about dealing with the list because of the uncertainties, the possible inaccuracies, and the copyright. As one broker noted, "What can I do with a list that cannot be given to potential purchasers? I make my living by exposing properties to as many persons possible." The list contains 191 assets, but over 76 percent of the assets had no prices stated. A San Diego realtor sent the list to the Committee with the following note:

"I am on the FADA mailing list, and this is what they produce—lists of assets without prices. This is a black hole for the U.S. taxpayer that should be eliminated."

Perhaps a guilty conscience and a few negative comments from potential buyers led FADA once again back to the drawing board.

On January 1, 1988, FADA released another Property List which had substantial cosmetic changes but not much else. The list contained 258 properties, of which only 124 were currently available. Of that 124, 54 of the properties were unpriced. Thus, of the 258 properties listed, potential buyers could begin transactions on just 70 of the assets. The list still contains the disclaimers and a copyright, and again many of the properties have no prices, maps, or location descriptions, and now even the net operating income has been omitted. In addition, when comparing FADA's original property summary containing four assets to its newest list, FADA has not sold those original four properties and, in fact, the asking price for one of the properties has dropped by almost $2 million.

Although FADA's advertising approach leaves much to be desired, people somehow find out about FADA's assets and call to make inquiries. Real estate developers, along with other potential purchasers of property and private contractors experienced in the management, marketing, and disposition of troubled assets, have from FADA's inception complained that FADA is unresponsive to telephone calls, that when calls do go through, FADA will not disclose properties available for sale, and that FADA is generally unhelpful and uncooperative. Some individuals were told that all information must be submitted in writing to FADA's headquarters in San Francisco, others were told that FADA does not have properties for sale, that FADA "simply manages them for FSLIC."

Determined individuals have eventually reached FADA personnel in San Francisco only to be told to continue calling because FADA would like to get to know them but cannot do anything until they submit a questionnaire, an outline of recent acquisitions, a financial profile, and for potential purchasers, a letter from the lending institution. These procedures not only are unacceptable and unrealistic but also are ironic for several reasons: (1) Many individuals involved in business ventures wish to remain anonymous. (2) If the deals are on an "all cash" basis and if a person has the cash in hand, why is a financial profile necessary? (3) How can an individual obtain a commitment from a lending institution when FADA refuses to disclose even the location, size, and value of an asset?

Clearly, this cumbersome process is a deterrent for persons interested in working with FADA and can only lead to confusion, problems, and complaints.

FADA's complaint merchanism

On July 28, 1987, Committee staff investigators interviewed Roslyn Payne in San Francisco to determine what, if any, mechanism FADA had established to deal with complaints such as those which the House Banking Committee had received from buyers and contractors interested in FADA assets and work, respectively. During our interview with Ms. Payne and several key FADA officials, FADA claimed to have received to have received only a few complaints. This is entirely possible since FADA's elaborate series of reporting systems does not have a system designed to handle complaints.

Unlike FADA, a number of other government agencies have set up separate offices or have assigned employees to handle complaints from consumers, contractors, and others who have dealings with the agency or with entities under the agency's jurisdiction. For example, the General Services Administration (GSA) maintains a Board of Contract Appeals, which is charged with resolving disputes arising out of contracts with the GSA, the Department of the Treasury, the Department of Education, and 44 other independent government agencies.

Apparently, FADA's regional offices are not required to pass complaints received from potential subcontractors, or subcontractors under contract to FADA, on to the national office, nor required to keep on file any complaints received. When Committee staff investigators visited FADA offices in Dallas and Los Angeles, they specifically asked FADA for copies of any complaints received by that regional office. To date, no records have been provided to the Committee.

FADA's San Francisco headquarters keeps few complaints on file. Indeed, when Congressional investigators requested examples of complaints, few FADA officials could remember having heard of any complaints. If a FADA employee acknowledged receiving a complaint, it was often dealt with verbally. Thus, little written documentation is available. The House Banking Committee requested that FADA produce any documented cases of complaints on file. FADA could only identify four cases. One such complaint came from Wayne B. Duddlesten, head of Wayne Duddlesten, Inc., of Houston, Texas:

"* * * our Duddlesten Management Corporation completed the [FADA] questionnaire well over one and one-half years ago and I assume it's on file in San Francisco. My frustration has been that it's impossible to find someone who will allocate the time to meet and discuss our firms unique qualifications. I'm worried that selection by FADA for asset management, either direct or subcontracted, may be more political than I realized."

In addition to FADA's files, the House Banking Committee has been deluged with complaints from potential purchasers and contractors, either directly by the complainants themselves or indirectly through their Congressional members. Persistent individuals who have gone to their Congressional members have been told by FADA not to get Congressional members involved. A Florida developer said he was told that if he cooperated by not involving his Congressman and became a "team player", FADA would engage him as a paid consultant. Another frustrated potential buyer expressed his feelings regarding FADA by saying that "FADA is more concerned about perpetuating their jobs than selling assets."

Mr. William Juliano was a frustrated New Jersey developer who sought to purchase FSLIC-owned properties in Florida that were under FADA's control. He alleged harassment by a private detective agency which he claimed was engaged by FADA. Later Mr. Juliano informed New Jersey law enforcement authorities and the Committee that his business office was burglarized and listening devices were discovered.

To date, New Jersey authorities have not concluded that a burglary took place, adding that certain physical evidence noted by the police suggests there was no forced entry or bugging. GAO's Office of Special Investigations and the Bank Board's Office of the Inspector General have reviewed the evidence and reached similar conclusions. The authorities asked that they not be quoted since the matter remains open.

What the Committee learned in pursuing the allegations of Mr. Juliano was that FADA was indirectly responsible for harassment. FADA retained the law firm of Akin, Gump, Strauss, Hauer and Feld for the stated purpose of preparing to contest a lawsuit threatened by Mr. Juliano. What transpired, however, was far from normal or routine. Akin, Gump, Strauss, Hauer and Feld retained the services of the Fairfax Group, Ltd, an entity which specializes in financial investigations. The Fairfax Group then retained a new Jersey private detective firm, Acumen Investigation and Protective Services, Incorporated (Acumen), to further check on Mr. Juliano. A principal in Acumen acknowledged to the Committee that Acumen was paid to investigate Mr. Juliano.

While Acumen's principal denied any illegal activity, she stated that Acumen did obtain information on Mr. Juliano under false pretenses, ran certain checks, and talked to his neighbors. She referred to Acumen's actions as common tactics—what they would usually do for a client.

It is significant that FADA would find it necessary to investigate a person who criticized its operation after being given the runaround when he inquired about certain FADA assets for sale. Upon review of the Juliano case during the October 15, 1987, Banking Committee hearing on FADA, Chairman Fernand J. St Germain summarized FADA's actions towards this buyer as follows: ". . . this man was treated as though we are in a police state." The hearing record on this matter, as well as a complete events chronology, appear in Attachments 3.2 and 3.3.

Other complaints have centered around the fact that FADA does not have a consistent bidding approach. Some bidders have been told they cannot submit an oral bid but that the bid must be in writing, only to later find out that the property they wanted has been sold to an individual who placed an oral bid. In an interview with the *Real Estate Times*, FADA's Vice President of Marketing stated that FADA had not yet utilized the sealed-bid or auction approach in the marketing of assets. Some buyers

have complained about inconsistent responses to their marketing queries depending on which FADA regional office they contacted.

It appears that FADA not foresee or plan to deal with inquiries from all over the United States because it was not until October 14, 1987, the night before Chairman M. Danny Wall testified before the House Banking Committee, that FADA and FSLIC met and agreed to designate a marketing coordinator in every regional office. Even so, the "coordinators" are no more than telephone receptionists. Instead of working on marketing concepts for the regional office or contributing to national policies, these "coordinators" answer telephone calls regarding asset inquiries, file written inquiries, and send out information packets.

FADA's inability to communicate effectively with potential buyers and contractors is of particular concern to FADA's board members. For example, in FADA's board of directors minutes dated November 1987, John Zellars, FADA's acting CEO, noted that "there are about 2,000 unrelated third parties, who want to do business with FADA. FADA is using approximately 10 percent of these companies but the selection process is not well understood in the marketplace. This is an area where improved external communications are needed."

Several marketing recommendations have been suggested by FSLIC officials that could help FADA's ailing marketing program. The recommendations included first and foremost, building a positive image. Other recommendations included development of an attractive multi-page brochure, attendance at or sponsorship of real estate marketing meetings, a toll-free number for interested parties to find out information on assets, dissemination of lists of available assets to the press, speaking engagements, and the creation of a National Marketing Task Force to include both FSLIC and FADA personnel.

According to the September 3, 1987, FSLIC memorandum containing the recommendations, a number of marketing ideas have been suggested to FADA, but FADA has not successfully implemented any suggestions. In January 1988, FADA produced a document for distribution to members of Congress outlining its newest developments in its marketing program which contained the same FSLIC suggestions FADA was so reluctant to implement earlier.

To date, many individuals have become extremely frustrated and have chosen to discount FADA as a realistic alternative to purchasing assets. One wonders how many potential buyers, qualified contractors, and dollars have been lost due to FADA's inability to develop sound marketing concepts and positive customer relations.

CHAPTER VI—FADA'S INABILITY TO FULFILL ITS DISPOSITION FUNCTION

FADA's disposition function is twofold: (1) presenting strategies or recommendations regarding the disposal of assets, and (2) actually selling those assets. Unfortunately, FADA seems to have difficulty fulfilling either part of this function. The difficulty surely stems from the fact that FADA's disposition philosophy presented through recommendations in its asset business plans reflects FADA's inability or refusal to develop strategies that are consistent with FSLIC's goals and objectives. Receiverships have obtained FADA recommendations that are inaccurate, inconsistent, and conflict with previous FADA recommendations made on the same asset. FADA's ineffective strategies are manifested in FADA's actual sales which, to date, have not only been unimpressive but have done little to replenish FSLIC's deposit insurance fund. In addition, FADA has presented misleading information with regard to the amount and type of assets in its portfolio, thus misrepresenting the number of properties which may eventually be available for sale.

FADA's disposition philosophy conflicts with FSLIC's philosophy

FADA can dispose of assets either through the workout of non-performing loans or through the sale of properties. However, FADA appears to have problems in the actual disposition of assets. These difficulties stem from the fact that FADA has a contrasting overall disposition philosophy from that of FSLIC. FADA's objective is to negotiate with a troubled borrower first. FADA would rather place assets in a holding pattern for the longer it holds onto a piece of FSLIC property, the more management fees it collects. FADA spends an inordinate amount of time trying to restructure loans, which in the past has proven extremely costly and time-consuming and has done little to replenish FSLIC's deposit insurance fund.

Erick Lindner, FADA's Senior Vice President for Real Estate, writes in *Outlook*, a monthly Bank Board publication, that "in handling non-performing loans, FADA must either find a way to help the borrower make the loan perform, or it must obtain title to the real estate securing the loan for FSLIC." To that end, FADA, as presented in its Business Plan Updates, continually boasts of its expertise in restructuring nonperforming loans. As of December 31, 1987, FADA claims that almost 47 percent of its total disposition activities is in the restructuring of loans and that over hundreds of millions of dollars worth are in the pipeline. These figures are quite unsettling in light of the fact that renegotiated loans do little to recover proceeds for FSLIC.

According to FSLIC officials, "restructured debt is the worst option available, it does not provide liquidity and does not collect the delinquent debt. Restructured debt can never be of better quality than that of the real estate and it is one step removed from title to the real estate." In view of FSLIC's position, FADA officials should not spend a significant amount of time restructuring delinquent debt. Instead, FADA should work to obtain title to the real estate. FADA's position favoring restructuring is easily understandable, since no matter how long negotiations last and whatever the outcome of its restructuring efforts, FADA still collects its fees.

In addition to loan restructures, FADA has attempted to come up with other disposition concepts. FADA has surfaced these ideas as "original" recommendations and believes they are far superior to those of FSLIC. Concepts recommended by FADA include hold versus lease versus sell, the securitization of collateral for use as a debt instrument, and bulk sales to entities that have a large number of investments, such as pension funds. All of these ideas are not unknown to FSLIC, and, in fact, FSLIC recommended some of these ideas to the Bank Board in a modified form. However, these techniques are riskier than the traditional methods and take more time to implement.

FSLIC officials have evaluated these strategies and arrived at the following conclusions. The decision to hold/lease/sell entails great risk in weak or depressed markets, both of which are characteristic of the areas where FADA has the majority of its properties. If FSLIC is to hold anything, it should not be paper that can only be liquidated for less than the real estate liquidation value. Given that securitization could include restructured debt, this concept is risky because the borrower has defaulted before and may do so again. Therefore, restructured debt does not guarantee maximum dollar recovery.

While the loan is being restructured, there is cost involved in maintaining the asset and there is always the chance of depreciation. Bulk sales is a difficult strategy in that there is more time involved in developing a package deal and there are fewer potential purchasers. Developing an asset package translates into additional costs to maintain each asset and selling the assets in bulk means selling at a discount. Thus, again, potential for financial loss exists or, at least, a reduced net gain for FSLIC results. Some suggest that FADA should concentrate on the immediate sale of assets through strategies that can be implemented immediately while continuing to work on techniques that require long-term development and planning.

FADA's inconsistent and conflicting recommendations are unacceptable

In one case, FADA submitted two separate recommendations for one asset, *Atlantic Square*, a parcel of land intended for a shopping center located in Delray Beach, Florida. One recommendation was to sell the asset to a person who had a poor credit history, who was instrumental in the failure of a savings and loan, and who had been indicted for misapplication of bank funds (although FADA did advise FSLIC that a successful workout may be beneficial to this person's criminal defense strategy!). FADA even suggested in a memo to FSLIC that this person was unreliable, his motives were questionable, and his finances could be shaky. FADA submitted a second recommendation proposing to place the asset up for bid and sell it at the appraised value. FADA contends that the first recommendation is based on an offer that was well over the appraised value. The second recommendation was based on the idea that if no settlement was reached on the offer, than the property should be available for bids. FADA delayed the bidding process (which could ensure a sell) on the basis of a questionable offer. In this case, FADA delayed the chance of a solid sale to a purchaser in an attempt to work out a deal with a person who could not even obtain a credit card.

In the case of *Fiddler's Cove*, condominiums located in Lutz, Florida, FADA recommended a workout that would cost the receivership $816,233 and net the receivership $759,000, resulting in a loss of $57,233. In this case, FADA had trouble remembering that the goal is to make money for FSLIC.

To further illustrate FADA's inconsistent recommendations as well as demonstrate FADA's disregard for and unaccountability to FSLIC, FADA submitted conflicting recommendations as part of a "mind game" being played on the borrowers in the case of *Cheval Golf and Polo Club* located in Tampa, Florida. FADA sent FSLIC a memo indicating that a workout with the borrower was in process and that no other action need take place. FADA then decided that the borrowers were dragging their feet, so as part of their "negotiation strategy to apply pressure on the borrower," FADA sent FSLIC another memo recommending that foreclosure activities begin on the

asset. In prior conversations and memos, FADA's regional manager indicated that FADA had rejected the settlement and intended to pursue foreclosure, but when a FSLIC officer called FADA's asset manager, he stated that FADA had no intention to foreclose. It is not known if FADA's regional manager and FADA's asset manager had different strategies on the same asset, if directions changed in midstream, or if FADA was simply using FSLIC as its "straight man." In any case, this confusion and conflict displays a lack of management and disposition skills as well as a disregard for FSLIC.

Additional problems have included submitting recommendations without sufficient information for the receivership to analyze and approve the strategy. For example, the values of some properties are unknown, no bid amounts are recommended, no information is given on additional equity in second mortgages, and no information is given on whether funds will have to be advanced at the time of sale.

Also, FADA displays its conflicting disposition philosophy through its privatized approach to holding assets. In the *Great Hills Office Plaza* and *West Oaks Bayou Condominium* assets, located in Austin and Houston, Texas, respectively, seven to eight months after being assigned these assets, FADA submitted business plans that recommended holding the assets for a certain length of time in the hope that the economy would improve. This recommendation is quite ironic since a FADA official told Committee staff that the Austin, Texas, market was, in her opinion, the "worst in the world." Accordingly, the receiverships did not approve of such speculation and rejected these proposals. However, FADA's comments on this issue suggest that they only adjusted the recommendations in the "spirit of cooperation" and not because FADA believed that it was incorrect to speculate with government funds. Had FSLIC followed FADA's advice, the receivership may have incurred additional losses due to devaluing/deteriorating assets and significant management, maintenance, and construction costs.

FADA's consistency is obvious in one area—in the revisions of its plans and recommendations. FADA's constant adoption of FSLIC strategies implies that FADA recommendations do not have solid support and that FADA never considered the receivership's position or concerns raised during FSLIC's review of the initial plans. Changing asset strategies lengthens the disposition process and creates confusion for prospective buyers who do not know if or when assets will be for sale and for receivers who are unclear of the status or value of various assets. Because the plans end up being useless to the receiverships, the taxpayers' money is simply being wasted.

FADA's defiance has resulted in increased risks and costs to receiverships and raises questions concerning their ability to adequately support disposition recommendations.

FADA misleads the public about assets in its portfolio

Information FADA has presented regarding the amounts and types of assets in its portfolio—and thus potentially available for sale—has been misleading. As stated earlier, both the Committee and the public perceive FADA's main business as selling property. However, according to FADA, "this perception is far from reality."

In its September 30, 1987, Business Plan Update, FADA stated that its overall portfolio consists of 80 percent loans and only 20 percent real estate owned properties (REOs). Of these REOs, a substantial portion are in litigation or have uncompleted business plans and are not immediately available for sale. Thus very few properties are truly for sale. Based on our review of a briefing report prepared for the Bank Board on September 3, 1987, this information could be misleading because FADA could have more potentially "salable" assets in its portfolio than are being reported. In this report, FADA asserted that its managed assets from liquidating receiverships, assets which when disposed of create proceeds to offset FSLIC's and other creditors' claims against a closed institution, consisted of 56 percent loans and 44 percent REOs.

It would be expected that a significant number of restructured loans occur under the management consignment program where the open institutions are geared toward handling loans as compared to a larger number of REOs in receiverships, which are liquidating entities. As such, potential buyers will look to liquidating receiverships when seeking information about assets available for sale. If buyers hear that FADA's overall portfolio consists of only 20 percent REOs and do not hear that FADA's portfolio from liquidating receiverships consists of 44 percent REOs, then buyers may be misled into believing that fewer assets will be available for sale than there really are. Thus, FADA may be misleading the public and Congress about the number of properties in its portfolio in an effort to combat criticisms about its disappointing number of sales and lack of communication with potential buyers.

FADA misrepresents its sales and disposition results

The previously discussed problems with FADA's asset disposition activities are evidenced in FADA's lackluster disposition results. As of December 31, 1987, FADA boasts of completed sales and loan transactions totaling $583 million since inception. On the surface, $583 million, or 10 percent, of a total portfolio of $5.3 billion over 1½ years may sound impressive. However, further analysis reveals that half of this amount, valued at $275 million, consists of loan restructures, thus possibly resulting in little if any immediate proceeds to receiverships. In addition, FADA takes full credit for property sales despite the fact that FSLIC and receivership personnel are also involved in negotiations.

As shown in table 3, since inception, FADA claims $583 million in completed transactions consisting of $155 million in property sales, $153 million in loan payoffs, and $275 million in loan restructures. However, the degree of FADA involvement in completing the various transactions remains unknown because totals include assets which FADA actively manages as well as those in which it serves in the more limited advisory role.

TABLE 3.—SUMMARY OF COMPLETED FADA TRANSACTIONS FROM INCEPTION THROUGH DEC. 31, 1987

FADA contracts	FSLIC liquidating receiverships	Supervised associations	Total
ASSET MANAGEMENT			
Real estate sales	$120,460,370		$120,460,370
Loan sales and payoffs	129,250,084		129,250,084
Loan restructures and settlements	61,595,062	$9,696,772	71,292,374

TABLE 3.—SUMMARY OF COMPLETED FADA TRANSACTIONS FROM INCEPTION THROUGH DEC. 31, 1987—Continued

FADA contracts	FSLIC liquidating receiverships	Supervised associations	Total
ASSET ADVISORY			
Real estate sales		35,010,051	35,010,051
Loan sales and payoffs		23,408,165	23,408,165
Loan restructures and settlements		203,889,260	203,889,260
TOTAL			
Real estate sales	120,460,370	35,010,051	155,470,421
Loan sales and payoffs	129,250,084	23,408,165	152,658,249
Loan restructures and settlements	61,595,602	213,586,032	275,181,634
Total			583,310,304

Property sales

FADA boasts of completed property sales of $155 million under its asset management and asset advisory contracts. However, FADA's record to date indicates that many sales have not been completed solely by FADA. Of the $120 million FADA reports in completed property sales in FSLIC liquidating receiverships, some resulted from negotiations between receiverships and prior savings and loan institutions. Thus, FADA should not claim sole credit for selling the properties. For example, over half of FADA's total property sales of $120 million represents one deal. FADA was quick to claim credit for selling four Park Suites hotels, located in Florida and Texas, by circulating a press release to all members of the House Banking Committee entitled "FADA Concludes $70 Million Sale of Four Vernon Hotel Properties." FADA claims credit for selling the Park Suites properties in the Vernon Savings and Loan portfolio although the buyer was involved in acquiring the hotels before FADA became involved with Vernon.

In addition, FADA claims $35 million in completed property sales under its asset advisory contracts with supervised associations, or institutions in the management consignment program. However, $32 million represents sales from one engagement, Security Properties Incorporated, which FADA has been involved in managing since October 1986.

Furthermore, during the investigation, the Committee learned that $55 million which FADA initially reported as a property sale in June 1987 actually resulted in no real return to the receivership and should have been reported as a write-off. Since the receivership wrote off the asset, FADA was required to return all of its management fees billed. FADA corrected its records almost six months later in December 1987, after Committee investigators notified FADA of the incident. The Committee did not perform an extensive audit of FADA's disposition records. Therefore, it is not known if there are other such incidents where FADA claims credit for a disposition when in fact the asset was written-off by the receivership and no proceeds were recovered.

Loan sales and loan payoffs

The Committee also learned that FADA may not be able to take full credit for the $153 million in asset dispositions classified as loan sales and loan payoffs. Loan payoffs have resulted because (1) the borrower walked in off the street and paid off the loan, (2) the parties negotiated a deal, or (3) the parties were brought out at foreclosure, which is not a controlled or negotiated deal. Documentation FADA provided the Committee did not present a detailed breakdown

of this disposition category. Although the amount of FADA involvement in the disposition of loan payoffs is unclear, the mere fact that FADA did not initiate all loan payoffs leads to the conclusion that FADA should not take full credit for the total $153 million.

Loan restructures

FADA claims $275 million in completed loan restructures and, as anticipated, $214 million of the restructures are within supervised associations. However, the Committee learned that $199 million out of the $214 million involves one large Texas real-estate developer. FADA's involvement in this workout began as early as October 1986. Of the remaining $15 million, $10 million is located within one supervised association.

The Committee learned that of the remaining $62 million of loan restructures, occurring within FSLIC liquidating receiverships, a significant amount cannot be considered complete because borrowers have failed to make loan payments. According to a sample of receivership personnel interviewed, a substantial portion of the loan restructures FADA claims as successful in receiverships are not complete because the borrower has once again defaulted on the loan. As such, FADA is once again trying to renegotiate the restructure. FADA continues to collect its asset management fee for monitoring loans—whether or not the borrower defaults immediately. If the borrower defaults, then FADA must once again renegotiate the restructuring so the transaction is not complete and requires additional negotiation.

However, if FADA's claims are true and the restructures are complete, FADA may be holding a substantial portion of performing loans which could be turned back to FSLIC receiverships to manage, thus saving FSLIC the burden of FADA's asset management fees. Since most of the loans have been restructured recently, it is too soon to judge whether FADA's monitoring and recovery efforts have been successful. It is interesting to note that FADA spends considerable time renegotiating loans with borrowers who have defaulted on loans more than once. In a recent edition of the Bank Board publication Outlook, Eric Lindner, FADA's Senior Vice President for Real Estate, states that as opposed to some loan restructures which occur due to a bad economy and thus are beyond the borrower's control, "many FADA-managed assets are not in trouble because of bad luck or a bad economy. They are in trouble because of incompetence, malfeasance, or mismanagement."

FADA has not measured up to its own sales projections

FADA claims its disposition record is remarkable given that 50 to 60 percent of its assets have been assigned since March 1987. However, FADA has not lived up to its own sales expectations. FADA reported that as of September 30, 1987, $600 million in property sales and loan payoffs were under contract or negotiation. However, to date, FADA shows a total of completed property sales and loan payoffs of only $308 million. In addition, FADA expected that a $48 million deal consisting of six shopping centers announced last September and heavily marketed, would be closed by year-end 1987 because the properties were considered to be some of its most marketable and valuable. To date, none of these six properties have been sold. In fact, Committee investigators recently learned that these properties may no longer be available since they are being repackaged under a new marketing scheme.

In addition, as of September 30, 1987, FADA reported loan restructures worth $600 million as under contract or negotiation. However, as of year-end 1987, FADA reported less than half of the $600 million, valued at $275, as completed loan restructures. As previously mentioned, some of those restructures FADA reported as complete may require additional negotiations.

FADA reportedly had $1.2 billion worth of sales and loan activities under contract or negotiation as of September 30, 1987. Although this amount in the pipeline appears significant, FADA as a disposition agency, is supposed to have its assets under some type of deliberation. When assets are assigned to FADA, there are active negotiations, litigations, dispositions, and/or consultations occurring among the parties involved. Thus, the amount of assets under negotiation simply reflect a naturally occurring situation and not necessarily a FADA accomplishment. Assets under contract or negotiation do not represent final sales at this stage and do not help FSLIC financially.

Clearly, FADA is not fulfilling its mission in the disposition of troubled assets for FSLIC. Receiverships appear to be paying fees for portions of assets not under their control and have no idea from FADA of the extent of assets that are being managed for them as compared to the asset base. FADA is presenting FSLIC with recommendations that are in direct conflict with the policies and goals of FSLIC. This unacceptable display of performance highlights FADA's inability to adequately fufill its function as a disposition association and results in a loss of time, resources, and money for the receiverships. Surely, FADA is defeating the very purpose for which it was created.

CHAPTER VII—COSTLY OPERATIONS IS THE MAJOR FACTOR IN FADA'S NEAR INSOLVENCY

The Federal Asset Disposition Association is a savings and loan in serious financial difficulty. Since July 1986—the date of FADA's first receivership contract—to the present, FADA has lost nearly $15 million and is presently losing about $1 million a month. These losses have resulted in FADA exhausting the $25 million FSLIC originally pumped into the association. As of November 1987, FADA reported a negative cash balance and by year-end had only $5 million in securities. Because of the severe strain on FADA's financial position, FADA has (1) drawn advances of approximately $10.2 million on its line of credit with the Topeka District Bank—with $4 million advanced in December 1987 alone, (2) submitted a "bill" to FSLIC for $6 million, and (3) prepared a new contract fee structure which is expected to greatly improve FADA's capital position.

The bottom line is that FADA is expensive. The Committee understands that FADA's asset management agreement as originally envisioned required FSLIC to pay FADA a management fee of 75 basis points per asset per annum. So, given that FADA is managing approximately a $5 billion portfolio, its annual management fee nearly totals $37.5 million. The fee was considered sufficient enough to completely cover all aspects of FADA's asset management, marketing, and disposition costs with minimal asset maintenance costs passed on to the receivership. Currently, however, FSLIC receiverships pay FADA 75 basis points per asset per annum plus any other costs FADA incurs in managing the asset. Even though FADA charges a flat 75 basis points asset management fee and is able to pass all contracting costs through to FSLIC or the institution it services, FADA is unable to keep its head above water. (see Attachment 4.1)

When FADA was created, its only financial obligation was to obtain proceeds for FSLIC and to break even at the end of each year. Not only has FADA failed in these tasks, but by November 1988, FADA can be added to the growing list of insolvent savings and loan institutions which continues to drain FSLIC monetarily. The Federal Home Loan Bank of Topeka was also concerned about FADA's ability to absorb its overhead base, stating that a huge start-up loss in 1986 is understandable but should not be indicative of future performance. Future losses indicate cause for concern.

In 1986, FADA's operating expenses exceeded its revenue by $3.6 million. (see Attachment 4.2) FADA explained in its March 1987 Business Plan Update that the shortfall occurred because of extensive start-up expenses and overly optimistic budgeting. FADA has been losing money, in part, because FADA thought it would get more assets to manage, and thus more asset management fees, than it did.

In its March 1987 Business Plan Update, FADA also states that "the financial objective of FADA is to stay as close to the break even point as possible while recouping last year's [1986] net loss." However, FADA's financial statements tell a different story. During 1987, FADA lost an additional $11.2 million bringing its total retained earnings to a negative $15 million. (see Attachment 4.3) Instead of recouping previous losses, FADA continues to lose at least $1 million each month. Clearly this loss reflects more than "overly optimistic budgeting"; it illustrates FADA's inability to function as a viable and cost-effective organization.

It appears that FADA is trying to compensate for its debt-ridden financial condition by charging the receiverships higher and higher management fees and by requesting FSLIC to reimburse it $6 million for expenses. In just one case, after the receipt of a FADA billing statement, a receivership estimated that FADA had overstated its management fees by almost $500,000. Committee investigators also learned that FADA turned to FSLIC directly for help by requesting that it reimburse FADA $10 million for legal and appraisal services and management services on assets which had zero net realizable value. Negotiations have reduced FADA's request to $6 million; however, there is no indication that FSLIC has agreed to reimburse FADA.

Given the fact that FSLIC's receiverships have had such a difficult time obtaining information from FADA in order to accurately monitor spending, verify billings, and make payments, one wonders how FADA can support its $6 million request and whether it has overestimated the bills of other receiverships. Again, FADA appears to be depending on FSLIC and the receiverships to bail it out of bankruptcy without sacrificing any of the luxuries FADA has afforded itself. These luxuries include FADA's excessive expenses for salaries and bonuses, travel, equipment rental, office space, and executive search firms, all of which prohibit FADA, and more importantly FSLIC, from realizing a significant return on asset dispositions.

Personnel compensation

FADA's high overhead costs, particularly salaries and related compensation, have the potential for diminishing returns to the Federal government in the liquidations. During 1987, FADA incurred salary ex-

penses of $19 million, and since its inception, salary expenses have totalled over $22 million. Under its current structure, 1988 salaries for FADA's 32 senior executive positions may alone account for over $3 million. (see Attachment 4.4) Roslyn Payne, former FADA President and Chief Executive Officer, earned an annual salary of $250,000. In 1986, the top 17 officials were paid annual combined salaries of $2.1 million. At a time when FADA had not yet developed performance criteria, these same officials received additional performance bonuses of nearly $200,000 for, in all but one case, six months or less of work. Ms. Payne received the highest bonus at $75,000. The bonus for the FADA president is, in fact, almost equal to Federal Reserve Chairman Alan Greenspan's total annual salary. Her total compensation of $325,000 is over one-third more than the salary of the President of the United States.

Even FADA's board, aware of the political implications of paying bonuses, expressed concern over the amount of bonuses being considered. During a January FADA board meeting, Ms. Payne presented an incentive compensation plan with 1986 bonuses totalling approximately $291,000 to be paid by March 1987. Not only did Ms. Payne convince the board that the bonuses were well deserved but she also expressed concern that the level of bonuses might not be reflective of the marketplace. Several board members voiced concerns that performance measurement must be difficult in a "start-up" year and that the personnel committee on the board had only recommended that 50 percent of the potential bonuses be paid while the plan recommended 75 to 80 percent of the bonuses be paid. In addition, one board member expressed the view that the bonuses paid should be consistent with the commitments made to employees when they were hired. Although FADA paid the 1986 bonuses, discussions regarding the process for determining bonuses continue. To date, 1987 bonuses have not been paid.

Despite a steady decline in its capital, FADA has, since August 1987, awarded salary increases to its senior executives ranging between four and ten percent. In addition, during 1987 FADA paid the certified public accounting firm of Coopers and Lybrand $225,000, of which a significant portion funded personnel compensation studies to estimate the salaries and bonuses for various positions.

Travel and telephone expenses

During its first 18 months of operation, FADA spent $1.8 million for its own administrative travel—$1.3 million in 1987 and an additional $500,000 in 1986. This is in addition to the travel for asset management, which FADA passes on to FSLIC. FADA has also incurred nearly $950,000 for telephone expenses since its inception. This seems to be a large sum considering the complaints the Committee has heard from contractors, developers, participants, and buyers that FADA is not returning phone calls or cannot be reached. However, FADA officials do find time to use airplane telephones, which cost significantly more than standard phones.

Our review of travel vouchers, dated March 1986 to November 1987, also revealed serious concerns. Travel itineraries and vouchers indicate that Ms. Payne and other senior FADA executives spend a large amount of time interacting with savings and loan lobbyists. Hence, less time appears to be spent dealing with the actual loan workout and asset management and disposition activities. Ms. Payne and other FADA executives give frequent presentations to lobbying groups and meet frequently with members of Congress, state savings and loan leagues, representatives from savings and loan institutions, and newspaper and television reporters.

Ms. Payne and FADA executives appear to spend more time meeting with FADA's board of directors and the Bank Board chairman and directors than interacting with FSLIC, its parent agency. The Committee's concern is that Ms. Payne has had few meetings with FSLIC personnel specifically in relation to her areas of expertise and may have spent more time on promoting FADA than on asset dispositions.

Ms. Payne has attended meetings with Congressional members, acted as a spokesperson for FADA, and discussed the operations of the Bank Board and FSLIC without the Bank Board or FSLIC's knowledge or approval. In fact, at a March 1987 FADA board of directors meeting, several members expressed concern that "Ms. Payne was required to spend too much of her time engaged in administrative and political matters in Washington, D.C. taking time away from real estate workout matters for the FSLIC."

Discrepancies

Our review of travel documentation indicates that FADA will not be able to account for funds because of poorly filled out and poorly audited travel vouchers. It appears that top senior executives have not been following proper travel procedures and the auditors have been letting the executives slip by.

For example, Ms. Payne submitted two expense reports for the same trip or expense. Due to double reporting from January 1987 to May 1987 alone, Ms. Payne overcharged FADA and personally received $800. After Committee Investigators notified FADA of one of the incidents, Ms. Payne reimbursed FADA.

Additionally, meal and hotel costs for executive personnel were excessively high since FADA personnel are not bound by federal government travel regulations which restrict such expenses. On one voucher, Ms. Payne submitted a claim for dinner totaling $875 with no indication of who participated and why. Further, hotel rates per day were as high as $183 for Ms. Payne and $215 for Mr. Robert Axley, FADA's Senior Vice President and General Counsel, significantly higher than typical government rates.

In addition, FADA reimbursed Mr. Axley as much as $1,200 for charges at a luxurious San Francisco hotel, including laundry bills, although he lived in San Francisco! In fact, FADA reimbursed him twice for the same hotel charge incurred during August 1987—two months before he resigned from FADA. After the Committee pointed this out, the FADA accounting department notified Mr. Axley that he must reimburse FADA. Although this Committee has seen no proof, an internal FADA memo claims that Mr. Axley submitted reimbursement to FADA during February 1988.

Furthermore, the Committee understands that the travel documentation it most recently requested was turned over to FADA's accounting department, which closely scrutinized the vouchers and identified numerous discrepancies. One such discrepancy led to the accounting department notifying Ms. Payne that FADA would neither pay for a trip taken by Mr. Lisle Payne, Ms. Payne's husband, that was charged on FADA's credit card nor pay for personal travel for her and her husband which was included on her expense reports.

Obviously FADA's approach to monitoring travel expenses was inadequate and may need improvement. Not only did these concerns surface during our review, but they were reported to Roslyn Payne last Spring in a FADA internal audit report which identified concerns with travel expense reports. Furthermore, Chairman Wall testified before this Committee on October 15, 1987, that "to the extent that they [travel policies] may not be sufficiently clear, they need to be tightened and clear."

Occupancy expenses

Since its inception, FADA's occupancy expenses have totaled $2.2 million, $1.9 million in 1987 and $319,000 in 1986. This may not be excessive for a private-sector entity, but it is for an organization responsible for recovering funds for depositors and creditors.

Under FADA's charter, its headquarters was to be located in Denver, Colorado. After Roslyn Payne accepted the position as CEO, the administrative headquarters was moved to San Francisco, near Ms. Payne's home. FADA does not maintain office space in buildings owned by receiverships, instead it leases office space in high-rent districts from the private sector. For example, FADA's San Francisco headquarters, with its breathtaking view of the Golden Gate Bridge, currently costs over $66,000 per month—although FADA claims it subletted the space at a reduced rate.

When the Denver Regional Office requested additional office space last Fall at $15-17 per square foot, one FADA director commented that "space rented by FADA [in Denver] should have been in less costly locations." Nonetheless, the San Francisco office space is rented at over $24 per square foot. In addition, FADA's Dallas office negotiated a five-year irrevocable lease for office space with monthly rental payments of nearly $42,000. FADA could have occupied any number of FSLIC-controlled properties, however, including sharing existing office space in a building rented by the FSLIC Southern Regional Office. Providing no further expansion of its Dallas office space, FADA's total rental obligation for this space exceeds $2 million through July 1992.

Equipment rental expenses

Since its inception, FADA has incurred equipment expenses of $2.3 million. In 1987 alone, FADA incurred expenses of $1.9 million. A significant portion of this expense is related to FADA's development of an extensive management information system (MIS). Again, in attempting to perpetuate the private-sector view, FADA entered into an irrevocable lease for computer equipment which FSLIC officials have identified as incompatible with FSLIC's current asset management reporting system. The incompatibility of the FADA and FSLIC computer systems was brought to the attention of the responsible individuals who established the FSLIC Management Information Systems (MIS) Task Force to resolve the issue. However, FADA has not attended any meetings, nor has it assigned a representative to sit on the task force.

Executive search firms

In addition to high salaries and bonuses, since its inception, FADA has paid $888,000 in executive search fees. FADA spent $644,000 during 1987 and $244,000 in 1986 to find exceptionally talented individuals, some of whose performance has since proven to be lacking. This approximately $2

million worth of salaried talent has not alleviated previously cited concerns regarding the quality and timeliness of business plans or FADA's asset management decisions. FADA paid the executive search firm of Korn/Ferry International $125,000 to identify Ms. Payne as a candidate most qualified for the position of FADA's CEO. The Committee understands that she has since been removed by Bank Board Chairman Wall. Korn/Ferry was also paid $50,000 to find FADA a Senior Vice President for Administration—a search which took nine months. While FADA pays extravagant fees to executive search firms to find individuals it considers highly qualified, FSLIC is able to attract qualified talent through in-house recruiting efforts.

In Summary, FADA is wasting money that should be returned to FSLIC and the receiverships' creditors. FADA's sole stockholder, FSLIC, is watching the steady erosion of its investment. FADA is $15 million in the red and losing another $1 million a month. The entity created to play a vital role in liquidating insolvent thrift institutions is nearing insolvency itself.

CHAPTER VIII—FADA'S SERVICES ARE EXPENSIVE AS COMPARED TO FSLIC RECEIVERSHIPS AND THE PRIVATE SECTOR

In carrying out its work for FSLIC, FADA's so-called "private-sector expertise" does not necessarily nor entirely come from FADA but rather from subcontractors who perform services for FADA. FADA's parcelling out of its work results in FSLIC receiverships assuming increased costs, increased responsibility for the oversight of quality control in FADA's subcontractors' work, and, occasionally, less efficient services due to the use of third-party subcontractors.

It appears that the majority of FADA's work, including preliminary business plans and asset business plans, is performed by subcontractors. Although FSLIC uses subcontractors for a large part of its asset management and disposition work, FSLIC endorsed the use of FADA primarily because it would provide FSLIC with real estate expertise not found within its own organization or amongst the numerous subcontractors having worked with or already working for FSLIC. Yet, when FADA sprang into full operation in July 1986, it began drawing on a pool of subcontractors, many of whom FSLIC had already dealt with, to provide FSLIC with the "expertise" for which it had initially hoped FADA would provide.

FADA's employment of subcontractors to perform a significant amount of its work detracts FADA from meeting its goals of optimum cost and efficiency. According to FSLIC, it can perform the work more efficiently with respect to time and cost, by doing the work in-house on subcontracting work to major asset management/disposition companies which have performed successfully for FSLIC in the past.

Under the terms of the current asset management contract, FADA's services are, by design, costly. FADA receives a flat asset management fee of 75 basis points of the value of each asset. On top of this fee, FADA is charging the FSLIC fund with additional overhead by billing FSLIC for all direct and allocable indirect costs related to its management of a particular asset.

During the Committee's investigation both private-sector asset management firms and officials from FSLIC's receiverships were interviewed. All parties interviewed echoed the fact that FADA's contract is very expensive. In 1987 alone, FADA charged asset management and advisory fees of over $20 million. In addition, FADA has billed FSLIC at least another $50 million for reimbursable expenses. These reimbursable expenses FADA bills FSLIC are all-encompassing and primarily include the costs incurred by FADA to hire subcontractors to perform the following functions for them: appraisals and appraisal review; asset management, disposition, consulting, and analysis; property management; and legal and brokerage services.

Many of the receivership officials stated that if they could terminate their contract with FADA, the receivership personnel are fully capable and could very easily take over FADA-assigned assets. One official went as far as to suggest that if FADA must be maintained, "a serious alternative is to renew the contract, reassign all the assets to the receivership, continue paying FADA its management fee and the receivership would still save money." Other receivership officials stated that FADA "is higher priced than many other asset management companies that are as well qualified and provide better service." A representative from a private-sector firm stated that "FSLIC's contract with FADA is a bonanza." He also stated that "his firm would be willing to purchase FADA outright from FSLIC for as much as $125 million if the contract FADA has with FSLIC is maintained."

Comparison of FADA with FSLIC receiverships

In order to evaluate whether FADA's billings to FSLIC are excessive, the Committee requested cost information from nine of FSLIC's receiverships where FADA has been assigned a significant portion of the assets and two of FSLIC's subcontractors responsible for performing asset management services similar to those provided by FADA.

Listed in table 4, on the following page, are the nine receiverships by dollar amount of their assets and the value of those assets transferred to FADA as of September 30, 1987.

TABLE 4.—DOLLAR AMOUNT OF ASSETS TRANSFERRED TO FADA

[In millions of dollars]

Receivership	Total asset value	FADA's asset value
First South	1,280	635
Sunrise	910	603
Centennial	190	54
Presidio	104	68
Sun	201	71
Burkburnett	162	107
Liberty	126	48
Homestead	104	57
Bell	76	26
Total	3,153	1,669

As shown in the above table, FADA has about 53 percent of the total asset value that presently exists in these nine receiverships as of September 30, 1987. Also, as of this date, FADA's asset value of approximately $1.7 billion in the nine receiverships represents about 80 percent of FADA's $2 billion total in receivership assets which it manages.

The Committee requested that the nine FSLIC receiverships provide it with the amounts FADA has billed each receivership to date. Also, the Committee requested receiverships provide information on the incremental costs including human resource costs which would be incurred by the receiverships on a monthly basis if performance of the duties on assets currently assigned to FADA became the responsibility of the receivership office.

The analysis prepared by each receivership is irrefutable; significant savings could be realized at each receivership if partial or full reassignment of the portfolio of assets currently assigned to FADA occurred. If these nine receiverships eliminated FADA's service for 1988 alone, they could save FSLIC at least $10 million. Table 5 presented on the following page shows the nine receiverships by the amount of FADA billings, the incremental cost to the receivership acquiring FADA's assets, and the resulting savings.

TABLE 5.—RESULTING SAVINGS IF RECEIVERSHIPS ASSUMED FADA'S DUTIES

[In millions of dollars]

Receivership	FADA billings	Incremental cost	Resulting savings
First South	8,843	5,044	3,799
Sunrise	4,372	1,434	2,938
Centennial	765	150	615
Presidio	1,133	315	818
Sun	1,460	309	1,151
Burkburnett	420	218	202
Liberty	156	70	86
Homestead	311	159	152
Bell	192	72	120
Total	17,652	7,771	9,881

It should be noted that the resulting savings calculated due to the receiverships acquiring FADA-managed assets is greater for those institutions where FADA manages a large asset portfolio. Since the savings is a projection for 1988 alone, the full magnitude of the potential savings available to FSLIC remains unknown. For example, one receivership official calculated the potential savings prior to the preparation of the Committee's request and determined that if FADA's services were not utilized from the receivership's inception to date, another $1.2 million in additional savings to the FSLIC insurance fund could have been realized. (See Attachment 5.1)

Many receivership officials were concerned that FADA supporters would consider the results highly suspect and without merit. Receivership officials were concerned that the Bank Board, as presented in a letter to Chairman St Germain by its Executive Director for Public Affairs on December 28, 1987, would state that "without objective criteria and standards for comparison, it is exceedingly difficult to draw any meaningful conclusions concerning the relative cost of asset management by FADA and FSLIC receivership staff." FSLIC receivership officials, realizing the potential for criticism and the concerns over the accuracy of the accounting, used conservative estimates and built in overhead cushions to determine costs for managing the assets currently managed by FADA.

FSLIC receivership officials believe that given the resources identified in their analyses, they can effectively perform FADA's current assets management function. Of the $7 billion in troubled assets being liquidated from receiverships as of September 30, 1987, FADA managed only $2 billion, or 28 percent. The remaining $5 billion, or 72 percent, as stated by a FSLIC official, was efficiently managed, marketed, and disposed of by receivership personnel with assistance in some cases from subcontractors. In addition to demonstrating that they have significant expertise in handling large portfolios of troubled assets, receivership personnel be-

lieve that they are just as familiar with those assets presently assigned to FADA, having in some cases engaged personnel who were responsible for the management of these assets while employed at the troubled institution.

The receivership's familiarity with FADA's portfolio is further emphasized by the fact that during the transition period, when the Bank Board directed FSLIC's receiverships to transfer portions of their asset portfolio to FADA, receivership personnel had to work closely with FADA personnel providing background on the assets, details on specific problem assets, and an understanding of FSLIC's policies and procedures. Furthermore, the staff is also familiar with the business plans prepared by FADA and its contractors since the receiverships had to establish a separate review department to install a quality control mechanism over FADA's poorly prepared business plans. In summary, receivership officials believe that "any learning curve would be minimal if it occurred at all."

Comparison of FADA with private contractors

The Committee also requested that the two well-known and well-established asset management firms, the J.E. Robert Company and the Palmieri Company, provide it with information on the asset management services performed or being performed by their firms for FSLIC. Information requested of the two firms included the initial value of assets managed, rate or formula for calculating asset management and disposition fees, number of staff engaged, use of contractors, number and value of assets sold, and the asset management and disposition fees billed to FSLIC's receiverships.

In an effort to gather specific information and summarize detailed cost analyses related to FSLIC's asset management contracts with the J.E. Robert Company, the Palmieri Company, and FADA, the Committee requested assistance from the GAO. The GAO was asked to obtain information on three failed institutions: First South Savings and Loan in Little Rock, Arkansas; Sunrise Savings and Loan in Boynton Beach, Florida; and San Marino Savings and Loan in San Marino, California. The Committee's comparison of the services provided to these troubled and failed institutions revealed that FADA's asset management fees were higher than the private-sector firms. Table 6 below presents a comparison of fees billed by asset management organization.

In addition to asset management fees, both the J.E. Robert Company and the Palmieri Company received a disposition fee. The disposition fee varies by contract, but generally the fee structure FSLIC negotiates is based on an initial fee (1.5 to 2 percent) that declines by a specific amount on a periodic basis to a fixed floor level (about .20 percent). Although FADA does not directly receive a disposition fee, it receives reimbursement from FSLIC for the disposition fees FADA is billed by subcontractors. The subcontractors' disposition fee which FADA incurs ranges from 1 percent on the very large assets to 10 percent on the smaller assets. This fee is separate and distinct from any brokerage fee paid by FADA.

The J.E. Robert Company provided asset management service at First South Savings and Loan on a portfolio of $825 million in assets under the watchful eye of the Dallas District Bank for four months prior to the institution being closed. After First South was closed, FADA was assigned to provide asset management services. The portfolio of assets assigned to FADA was substantially the same as the portfolio of the J.E. Robert Company.

FADA, in acquiring the asset management function at First South, should have had the benefit of the four months of work the J.E. Robert Company spent on the portfolio. Unfortunately, FADA has not appeared to capitalize on the J.E. Robert Company's efforts.

Data presented in tables 7 and 8 indicates that the J.E. Robert Company disposed of significantly more assets than FADA in a shorter period of time.

To make matters worse, the Committee's analysis revealed that FADA had recorded $7 million in disposition proceeds which were also claimed by the J.E. Robert Company. FADA has taken credit for the disposal even though the J.E. Robert Company performed 90 to 95 percent of the work and was paid for its services by FSLIC after its analysis. If this $7 million disposition proceed was eliminated from FADA's records, its average monthly proceeds would drop from $3.5 million to $2.9 million.

TABLE 6.—COMPARISON OF COST TO FSLIC FOR CONTRACTOR WORK

[In millions]

Contractor	Time period (months)	Value of assets managed	Asset management fee billed
J.E. Robert Co.	3.6	$825	$913
FADA at First South	11.6	835	3,547
FADA at Sunrise	14.4	619	3,207
Palmieri Co.	35.0	311	5,127

TABLE 7.—FADA DEMONSTRATES SLOWER DISPOSITION PACE

[In millions]

Contractor	Time period (months)	Total proceeds from dispositions
J.E. Robert Co.	3.6	$34.1
FADA at First South	11.6	41.2
FADA at Sunrise	14.4	19.0
Palmieri Company	35.0	132.6

TABLE 8.—FADA HAS LOWER AVERAGE MONTHLY PROCEEDS

[In millions]

Contractor	Amount realized	As a percentage of the value of assets managed
J.E. Robert Co.	$9.5	1.60
FADA at First South	3.5	.44
FADA at Sunrise	1.3	.21
Palmieri Co.	3.8	1.23

The analyses presented in tables 6 and 7 further revealed that although FADA is charging more in asset management fees than the Palmieri Company, it is not disposing of assets as quickly. FADA's current contract has a built-in incentive to hold assets, which is clearly evidenced by FADA's significantly slower disposition pace as compared to private-sector firms.

Clearly, these analyses indicate that FADA not only disposes of assets at a slower pace but FADA, as a contractor, is more costly than simply allowing the receiverships to perform the work with the additional resources necessary. FADA's rapid drain on FSLIC resources does not help and certainly inhibits the recovery process.

CHAPTER IX—FADA'S INEFFECTIVE PERFORMANCE AT VERNON FEDERAL SAVINGS ASSOCIATION

In addition to FADA's key role in the liquidation of closed savings and loans it is gaining a significant role in asset management and asset advisory activities related to troubled savings and loans. Beginning on August 1, 1986, FADA began providing advisory service on specific assets to supervised institutions at the request of the Bank Board and Federal Home Loan District Banks. Through March 31, 1987, FADA was involved with 13 such arrangements with the District Banks: one in Seattle, two in Dallas, and ten in San Francisco.

FADA's role in the asset management of supervised institutions is to provide a full range of asset management and disposition services to the new management of those institutions the Bank Board has installed. To date, the Bank Board and FSLIC have engaged FADA to manage three institutions in the management consignment program—the entire asset portfolios of two institutions and part of one institution. Assets under these agreements total about 1400, with a value of $2.5 billion. FADA's first involvement as an asset manager for a troubled savings and loan began with the very large and well-known Vernon Savings and Loan (Vernon) located in Vernon, Texas. FADA managed over 900 Vernon assets with a value of approximately $2 billion. Thus, this one assignment alone represented about 80 percent of the total value of FADA's asset management services to supervised institutions.

FADA's selection as asset manager for Vernon

On March 20, 1987, the Texas State Commissioner closed Vernon Savings and Loan Association and the Bank Board placed Vernon into the management consignment program. Vernon was closed after being found insolvent and had substantially dissipated its assets through unsafe and unsound practices. The vast majority of Vernon's loans, approximately 96 percent, were non-performing. These loans were characterized by deficient underwriting practices, including in many cases, the absence of adequate real estate appraisals.

Shortly before placing Vernon in the management consignment program, the Dallas Federal Home Loan District Bank and the Bank Board contacted San Antonio Savings Association on behalf of Vernon and eventually awarded them a contract to provide a management team to guide Vernon's daily operations. At this time, the Bank Board and the Dallas district bank also engineered awarding FADA a contract to manage Vernon's assets.

Committee investigators observed that neither the newly appointed board of directors of Vernon or Vernon's president and chief operating officer had any input into the selection of FADA as an asset management contractor. Committee investigators were informed that the selection of FADA was made by the president of the Dallas district bank in conjunction with the chairman of the Bank Board. It is well-known that FADA was lobbying for a major role in the management consignment program. Apparently, no other input was solicited from the Dallas district bank staff overseeing Vernon.

In plain English, an exclusive contract to manage Vernon's $2 billion portfolio was awarded without any effort to solicit bids (or even entertain bids) from other asset

management entities. Nonetheless, FADA served as the primary asset manager for Vernon for eight months, from March 20, 1987 to November 20, 1987.

FADA's contract results in excessive costs

One comment repeated time and time again to Committee investigators was that FADA's contract resulted in excessive expenditures. Vernon board members quickly cautioned that they were not responsible for establishing the contract. Other interviewees advised Committee staff to compare FADA's contract with that of other asset management entities.

As of September 30, 1987, FADA had billed Vernon a total of $5.3 million for asset management services. Of this amount, over $1.5 million was directly related to FADA's employment of subcontractors, even though FADA maintained a staff of 88 employees at Vernon. Under Vernon's contract, it passed these costs directly to Vernon in addition to its standard fee for all assets managed. Legal costs, under the direction of FADA, added another $5.4 million to the loss that FSLIC has experienced. In total, through September 30, 1987, FADA had directed billings to Vernon of approximately $10.7 million.

In addition to these costs passed on to Vernon, FADA claims it absorbed the costs of additional subcontractors hired to manage Vernon assets. FADA contracted with five consulting companies, whose hourly rates ranged between $60 and $150, claiming it did not have enough of its own employees to devote to the assets it was managing. FADA has paid these contractors $600,000 out of its own pocket through December 1987.

In comparison with a similar-sized private-sector firm managing a comparable asset portfolio, FADA's asset management expenses and legal expenses are exorbitant. Over a period of thirteen months, the private-sector contractor incurred $7.6 million in asset management costs, whereas FADA, at Vernon, over a period of five months, spent $5.26 million. Regarding the legal costs incurred by these entities, the private-sector contractor spent almost $3.6 million over the course of one year, whereas FADA, over a seven-month period, added $5.4 million to FSLIC's total losses. Over the last five months of that time period, FADA's legal costs averaged $1 million per month, while the private-sector contractors' legal costs never exceeded $407,000 per month. In summary, FADA's asset management and legal costs incurred at Vernon, totalled almost $10.7 million while the private-sector contractor costs totalled about $11.2 million for a contract period almost twice as long as FADA's contract period.

With this incredible amount of money being spent at FADA's direction, one would expect that the quality of professional services being provided to Vernon would be truly superb. Unfortunately, the remaining sections in this chapter indicate that this was not the case.

Poor performance in delivery of information to Vernon board

As an asset management contractor for a large portfolio of non-performing assets, FADA's primary responsibility is to quickly prepare status reports and preliminary and final business plans. The timely preparation of status reports and business plans is essential because these documents provide information on the assets' valuation and recommended strategies on the management, marketing and disposition of assets.

At its first meeting in April 1987, the board of directors was expecting a status report from FADA detailing the assets it was managing by type, noting the number and status of participation loans and number and status of raw land with an order of priority assigned to each for the purpose of planning work in the upcoming months. Instead, FADA presented the board with a considerable number of detailed asset business decisions. Had FADA presented the basic information in advance of its meetings, the board could have made more informed business decisions. As it turned out, the status report anticipated in April was not delivered to the board until August 1987.

According to a September 20, 1987, FADA report entitled Significant Accomplishments at Vernon, FADA had submitted 15 asset business plans to the Vernon board for its review. The Vernon board of directors minutes dated September 24, 1987, however, revealed that Vernon's chief asset manager, responsible for overseeing FADA's operations, stated in his presentation to the board that "no final business plans have yet been delivered."

During an interview with a director of Vernon's board, Committee investigators questioned whether the board had reviewed 15 asset business plans. In response, the director stated that he was unfamiliar with the number 15 but that if 15 were true, he was not satisfied and "would like to have recommendations faster than that." He was concerned enough to address the issue with Roslyn Payne as late as September 30, 1987. He asked her to provide the data to the Board more quickly given the severity of the situation at Vernon. The director emphasized that the board needed information from FADA in order to make critical decisions on assets.

Regarding preliminary business plans, FADA, in Significant Accomplishments at Vernon, stated that it had "delivered all 672 preliminary business plans within 90 days." This statement directly conflicts with a FADA official's statement at a Vernon board of directors meeting on July 22, 1987, 122 days after the institution was closed. One of FADA's own portfolio managers stated that "FADA has delivered approximately one-third of the preliminary business plans to the Association." The portfolio manager also stated that "FADA would begin delivering asset business plans toward the end of six months." In fact, it was not until August 27, 1987, 157 days after FADA's services were engaged, that Vernon's board of director minutes reflect that "all preliminary business plans have been delivered by FADA." And, as of November 1, 1987, FADA had presented the Vernon board with some 12 to 15 business plans out of a total of 900 business plans. These excessive time frames are in addition to the 1½ months that FADA was involved in Vernon as asset advisor prior to its asset management contract. Apparently, even though FADA was generally and, in some cases, intimately familiar with Vernon's asset portfolio due to its asset advisory contract, FADA still encountered difficulties in providing timely delivery of information.

Lack of quality evidenced in FADA's performance

Not only did the FSLIC officials interviewed address the issue of FADA's untimely delivery of information, but they also addressed the lack of quality in FADA's performance, performance not up to par with other contractors and performance that fell short of their expectations. For example, FADA, in an attempt to quickly generate initial information on assets, contracted with 13 separate firms to prepare preliminary business plans. As evidenced in a FSLIC document which reviews FADA's operations, none of these contractors had ever completed a preliminary business plan, and nearly 80 percent of the FADA-contracted preliminary business plans required clarification, corrections, or additional information.

As a result of inaccuracies in the plans, FADA was forced to hire an independent contractor, the certified public accounting firm of Laventhol and Horwath. The contractor remedied the situation by obtaining missing information and standardizing the results. This not only resulted in additional cost to the institution, but the process of cleaning up these poorly prepared plans caused severe delays and prevented timely decisionmaking on these assets because the plans were unavailable for review. In addition to untimely and mediocre information, the Committee consistently heard that FADA resisted cooperation and limited its communication with Vernon and San Antonio Savings Association.

Cooperation and communication were lacking

Committee staff were repeatedly informed that FADA was less than cooperative and communicated poorly, if at all, to Vernon management. As one official put it, "FADA lacks the ability to communicate vertically or horizontally and its senior management operates in a mode of paranoia which results in irrational decisions and impedes constructive action." The same official further stated that FADA often presented conflicting information to the Vernon Board.

As the Committee learned from the various officials interviewed, at both Vernon and San Antonio Savings Association, FADA's staff appear to be technically competent, but they lacked direction from senior FADA management and lacked the experience and sophistication to work without direction. As one Vernon director phrased it, "FADA needs a more pragmatic rather than bureaucratic approach to [its] work. FADA wants to be accountable only to FADA's Board of Directors."

A Vernon director was asked to comment on the cooperation and communication he has experienced with FADA officials and staff. The director made the following statements and observations: "Communication and cooperation could be improved. There has been some reluctance on FADA's part to cooperate, possibly stemming from FADA's desire to operate autonomously at Vernon. FADA's attitude could be [due to] its personality and it could be that FADA is a little bit concerned about who's looking over its shoulder, too, because while it purports to be a private corporation dealing with the private sector, it's really not. It is a real strange kind of a situation that we are working with having an asset manager operating as a contractor for us even though we are unable to contract with FADA for services we want. In the private sector if the contractor doesn't perform we fire them, except in this situation we can't."

In an effort to increase and improve communication and cooperation with FADA, the Vernon board requested San Antonio Savings Association to serve to oversee FADA's operations on a daily basis. FADA in Significant Accomplishments at Vernon also acknowledged the need for improving

its communications and cooperation. However, FADA's suggestions implied that the problems revolved around Vernon's board of directors needing to clarify data/information needs and that Vernon's counsel, managers, and staff needed to improve "bilateral communication." In addition, FADA has refused to provide signatures on legal documents, thus, jeopardizing FSLIC's and Vernon's fiduciary responsibility.

FADA disregards FSLIC's and Vernon's fiduciary responsibility

FADA's management of Vernon's asset portfolio reflects that FADA does not uphold FSLIC's fiduciary responsibility. According to all parties interviewed, FADA has been unwilling to cooperate with its client regarding its signature on legal documents. Since May 1987, FADA refused to sign legal documents regarding the disposal of assets asserting that FADA did not have signature authority as per the asset management contract. The legal opinions by the Bank Board, FSLIC, and the Dallas district bank concluded that FADA's current asset management contract provides it with the authority to sign such documents. Instead of fulfilling the clients' needs and its responsibilities under the contract, FADA proposed amendments to its current contract on numerous occasions. As of October 29, 1987, ten months into the engagement, FADA was still refusing to sign legal documents. According to one of Vernon's directors, FADA has to "start participating now in litigation . . . FADA people are the only ones with detailed knowledge of what is going on. They have to sign depositions and make themselves available for testimony, but they refuse to do it."

Based on the Committee's interviews and discussions, one notable case continued to resurface wherein FADA refused to share in FSLIC's fiduciary responsibility in overseeing its assets or performed its management functions in such a manner as to jeopardize FSLIC's fiduciary responsibility.

FADA, since May 1987, repeatedly reiterated to Vernon's board of directors, the Dallas district bank, and FSLIC/Bank Board that it refused to sign any affidavits which would place FADA as a witness to any asset-related information contained in such statements. While all parties involved, except FADA, believed that FADA signing affidavits was part of FADA's responsibilities and authority, FADA doubted such authority and requested the Vernon board of directors to write a letter to the Bank Board expressly stating that FADA, as asset manager for Vernon, retained the authority and responsibility to sign affidavits.

Vernon's counsel prepared such a letter and FADA's request culminated in Roslyn Payne hand delivering the letter from Vernon Federal Savings Association to FSLIC's Office of General Counsel (OGC) in July 1987. The letter clarified FADA's responsibility and retention of authority to provide signatures on affidavits and depositions, among others. FSLIC and the Dallas district bank rescinded the letter stating that FADA's contract clearly delineated that FADA held the responsibility and authority to sign as a witness on affidavits and depositions and deemed OGC approval of such a letter unnecessary.

Even though this case did not result in Vernon being charged with any negligence or incompetence, the potential existed for a court of law to call on FADA as a witness if the asset were in litigation or if an individual brought suit against FADA or Vernon. While such instances did not transpire, FADA, nonetheless, appeared to take its responsibility for signing affidavits lightly and showed no demonstrable effort to promote FSLIC's fiduciary responsibility for its assets. Had a receivership engaged in such practice, FSLIC/Bank Board would have held it accountable for its actions.

CHAPTER X—FADA EVOLVES AS AN AUTONOMOUS AGENCY

Although FADA was created solely to provide assistance directly to FSLIC, its only stockholder, it appears that the line of authority is diffused. From the beginning, the Bank Board either knowingly or unknowingly created the problem by establishing a separate board of directors for FADA. This board of directors, in turn, assumed total control of FADA and created a management system whereby executives would take direction only from the FADA board. Obviously, problems will result when FADA provides direct assistance to FSLIC, but receives overall guidance from its own board of directors. Unfortunately, the Bank Board has been unwilling and FSLIC appears to be unable to exert any authority over FADA.

As a result of this diffused line of authority, the Committee investigators have revealed a multitude of problems. Such problems include FADA's evolvement into a large bureaucratic entity, development of policies and procedures which are separate from the standard federal government regulations, and employment of staff who maintain active interests in real estate investment and development companies and ties to the savings and loan industry. Additionally, FADA's view of itself as independent from FSLIC has resulted in problems in the areas of cooperation, communication, and fiduciary responsibility.

FADA's accountability to FSLIC remains unclear

FADA's accountability to FSLIC remains unclear, as evidenced in the differing views stated by FADA, FSLIC, and Bank Board officials. Specifically, FADA believes that it is a separate corporation subject to the control and direction of its board of directors. Supplementing FADA's position, Mr. William McKenna, chairman of FADA's board, said in FADA's May 1987 board of director minutes that (see Attachment 6.1) "the Board of Directors of FADA was responsible for supervision of FADA and that the responsibility was not delegated." Furthermore, FADA's president and chairman of the board have repeatedly raised policy issues and difficulties with Bank Board members directly rather than bringing the issues or problems to the attention of the FSLIC director or other senior FSLIC officials for resolution. FADA's acting CEO and board member, Mr. John Zellars, expressed the opinion that the FSLIC staff wanted FADA to be supervised by the Operations and Liquidations Division (OLD) of FSLIC, and in his opinion, such supervision was not proper. Within a document analyzing FSLIC concerns, FADA expressed that it must remain free to bring matters to the attention of the Board when in its independent judgment it is appropriate to do so—again excluding FSLIC.

According to FSLIC's Office of the General Counsel, however, the Operations and Liquidations Division has authority over contractors FSLIC utilizes in the liquidation of failed institutions. In a memo provided to the Asset Disposition/Receivership Management Committee, FSLIC's Office of the General Counsel stated that: "the FSLIC must maintain its responsibility and accountability for contractors and the manner in which these contractors carry out functions delegated to them. FSLIC must be able to provide assurances that all Receiverships and supporting contracted services are carried out in the most efficient, effective and economical manner, in accordance with policies and procedures, legal/regulatory requirements and terms of contracts."

While FSLIC seems to have been given authority over contractors, FSLIC management has found it very challenging to exert such authority over FADA due to the lack of a definition of the relationship between FSLIC and FADA. To illustrate FSLIC's concerns and frustration in exerting its authority over FADA, FSLIC's deputy director stated in a memorandum during October 1986 to FSLIC's director that: "FSLIC and OLD badly need help for complex workouts and formulating business plans for large or impaired real estate. The OLD Director and his organization are under the direct control of the Director, FSLIC. FSLIC can hire and fire within this group as necessary to insure proper accountability. The same cannot be said for FSLIC's relationship with FADA. FADA is not and never will be an OLD in the hierarchy that extends from the Bank Board. OLD wears the government mantle. FADA is a subsidiary—a semi-private operation—a broker—a contractor. FADA is not Uncle Sam. Uncle Sam is supposed to control FADA."

As of the date of this report, the Bank Board has been reluctant to reconfirm FSLIC's authority over FADA's asset management and disposition functions. While the Bank Board has commissioned several studies regarding the FSLIC/FADA relationship and FADA's performance, no substantive changes have been implemented. Until the Bank Board delineates the lines of authority for FADA and adopts necessary changes, FADA will continue to operate as an unabashed independent bureaucracy.

FADA evolves as a separate and distinct bureaucratic entity

FADA's desire to relieve itself of all accountability to FSLIC and to operate as an independent entity led FADA to establish a separate bureaucratic structure. For example, FADA's original intent was to assist FSLIC through the formation of a small group of approximately 50 to 80 "specialized" real estate personnel. However, FADA mushroomed from a staff of 128 on October 31, 1986, to a staff of nearly 400 by year-end 1987, despite a hiring freeze instituted by Chairman Wall on October 15, 1987. FADA violated this freeze by hiring an additional 53 employees between October 15, 1987 and December 31, 1987. According to Chairman Wall's testimony on February 4, 1988, before the Subcommittee on General Oversight of the House Banking, Finance and Urban Affairs Committee, these new hires had already been sanctioned before the hiring freeze. Committee investigators' review of FADA's documents on new personnel, however, show that the 53 employees were hired subsequent to Chairman Wall's announcement of the hiring freeze. Also during this same time period, 16 employees were lost due to attrition.

FADA's bureaucracy of nearly 400 employees includes thirty-two senior executive positions. These senior executives oversee a pool of lawyers, budget analysts, an administration and operations division, six regional offices, an appraisal department, an office of contractor administration, and various other administrative offices. To sup-

port this expansive bureaucratic organizational structure, FADA maintains a centralized operation with a triumvirate management structure wherein the President/CEO, Senior Vice President/General Counsel and Senior Vice President/Real Estate formulate, implement and review policy or engage in asset management and/or disposition decisionmaking. These management functions also allow for input from the regional vice presidents and counsel. This two-tiered senior management team operates with little direct support other than its operational staff of portfolio and asset managers.

Consequently, FADA's thirty-two senior managers hold executive titles with high salaries yet manage very few employees. In essence, FADA's organizational structure is extremely top-heavy with at least two layers of review at the regional and headquarters levels with the triumvirate making all final policy and business decisions.

FADA also engages a private investment firm which serves as an advisor to FADA regarding its investment in government marketable securities. According to FADA's board of director minutes, each "advisor" receives approximately 30 basis points on the amount of assets under management which were originally estimated in the range of $15 to $20 million, meaning that each advisor could earn approximately $45,000 to $60,000. The Bank Board has at its disposal an Office of Finance which serves as an investment advisor to the district banks, effectively managing over $19 billion in investments. Given the nature of FADA's investments and the fact that a reputable investment advisor already exists within the Bank system, one wonders why FSLIC should be required to pay for services that could be effectively performed by the Office of Finance.

Activities of FADA executives result in conflicts of interest

FADA's efforts to perpetuate its autonomous view are manifested in FADA developing its own Business Code of Conduct instead of adopting that of the federal government. Committee investigators found that FADA employees maintain active interest in real estate investment and development firms, and ties to the savings and loan industry that would not be appropriate for government employees with similar duties. If FADA is going to assume its role as agent for FSLIC receiverships, and the accompanying fiduciary responsibilities, then FADA should come under the same conflict of interest policies and procedures which FSLIC/Bank Board employees and other subcontractors for FSLIC must adhere to. However, FADA chose not to accept the standard code of conduct for government employees and instead, with the aid of private consultants, developed its own code of conduct.

It was subsequently discovered that the laxness of FADA hiring and review practices did not reveal sufficient detail about employees' financial interests to determine whether potential conflicts exist. As such, the financial disclosure statements of numerous employees required significant review before appropriate actions could be determined. After conflicts arose and three employees were terminated because of their involvement with FSLIC-insured institutions, FADA, with the assistance of another consultant, revised its hiring procedures and financial disclosure statements to better screen applicants and employees. While the following instances may not be cause for concern in private-sector corporations, the Committee is concerned that activities of several senior FADA executives create the impression of conflicts of interest.

Potential conflicts include the selection of FADA's CEO and the subsequent selection of a FADA asset management subcontractor and, in at least one case, an executive's personal interest in assets under FADA's management. Several of FADA's executives continue to maintain stock and/or partnerships in real estate firms, investment groups, and interest in real estate assets managed by FSLIC-insured institutions.

Concerning Ms. Payne's selection as FADA's President and CEO, Committee investigators point out to the appearance of two potential conflicts of interest. First, a search committee composed of FADA directors recommended the selection of Roslyn Payne as President and CEO on the basis of a list of possible candidates submitted by Korn/Ferry International, an executive search firm. The search committee recommended and FADA's board of directors unanimously approved the selection of Roslyn Payne as FADA's President and Chief Executive Officer. Coincidentally, one of the directors on the search committee—Mr. Emmet Cashin—was also a business associate of Ms. Payne's husband, Mr. Lisle Payne, in the Fox Group, a real estate conglomerate. (see Attachment 1.1)

In addition to Korn/Ferry International receiving a fee of $125,000 to place Ms. Payne, Messrs. Korn and Ferry have since received payments from FADA through ConAm Corporation, an asset management firm chosen by FADA as one of its first major subcontractors. Messrs. Korn and Ferry are cofounders and current directors of ConAm Corporation. To date, ConAm has been paid over $650,000 for services it provides to a substantial number of properties in FADA's portfolio—the most paid to any one FADA asset management subcontractor.

Another example is FADA's termination of its former Dallas regional manager, David Williams, his principal assistant, William Swift, and a Dallas asset manager, John Scott, due to alleged conflicts of interest and unprofessional activities. FADA's review of their financial disclosure statements indicated they were involved in troubled savings and loan institutions or had defaulted on private loans to FSLIC-insured institutions.

FADA's problems with conflicts of interest came to a head in November 1987, when Mr. Robert Axley resigned as FADA's Senior Vice President and General Counsel amidst a Justice Department investigation regarding his involvement in real estate deals tied to savings and loan institutions which later failed. Mr. Axley is on a list of 290 individuals whose financial records have been subpoenaed by the federal grand jury in Dallas due to their association with "major land-development deals, or ownership interest in, or service as officers of, savings and loan institutions." While at FADA, Mr. Axley failed to file a financial disclosure statement until FSLIC revealed his financial interest in several loans issued by a severely troubled savings and loan. In fact, it was not until plans for the closure of this institution, First South Savings and Loan in Arkansas, were under way, with FADA requesting and being assigned the management of a substantial portion of the assets, that Mr. Axley provided the first written notice revealing his relationship with the savings and loan industry. Mr. Axley's financial disclosure statement, prepared ten months after he joined FADA, was not signed until after the First South "takedown" (the day the Bank Board closed the institution and reassigned its assets), and it was not received in FADA Headquarters until nearly two months after the takedown.

Although Mr. Axley managed to limit his personal liability by transferring his interest to a blind trust and having the law firm of Akin, Gump, Strauss, Hauer and Feld act as the Trustee, three of the savings and loan institutions which financed his projects have suffered considerable losses and are insolvent. Unlike Williams, Swift, and Scott, FADA did not terminate Robert Axley rather, he continued to be employed by FADA until his resignation in November 1987.

FADA's Business Code of Conduct stipulates that ". . . certain types of outside employment or business activities will not be approved under any circumstances . . . [including] work for any company or engaging in any business activity that competes or conflicts with Association interests including savings and loans or real estate companies." The code also provides that any employee holding financial interests which could be deemed as interfering with the execution of FADA duties, including general partnerships and stock ownership particularly in FSLIC-insured institutions, shall place all such holdings into a blind trust or dispose of them without causing undue hardship. However, certain FADA senior executives ignored the code and continue to maintain interest in real estate investment and development corporations, as shown below:

Roslyn Payne was previously employed by and owns stock in various Genstar Corporation real estate investment and development subsidiaries. Ms. Payne also has financial interests with the Fox Group, a major real estate development conglomerate which has partnerships with loans from savings and loan institutions. Ms. Payne's husband, Mr. Lisle Payne, is a business associate of former FADA director, Mr. Emmet Cashin, in the Fox Capital Management Corporation, a Fox Group affiliate.

Mr. Robert Axley, former Senior Vice President and General Counsel, maintained stock ownership in several firms including Axley and Associates, Inc. of Dallas, Texas, and Glenhurst Investment, Inc., a real estate investment firm.

Mr. David Gustafson, FADA's Denver regional manager, maintains a general partnership in a real estate investment company located in Denver, Colorado.

Mr. Dennis Dorsey, FADA's Dallas regional manager, and his wife own Dunhill Group Inc. in Dallas, Texas, a real estate company established to hold commissions which Mr. Dorsey received as an independent contractor.

Mr. P. Joseph DeSautels, FADA's Vice President and Director of Asset Management, maintains financial interests in and was former executive vice president of the Fox Group, a real estate syndication firm and DeSautels Company, a California real estate investment firm in which he owns real estate. He also serves as vice president of this firm.

Mr. Mark Plumley, FADA's Vice President for Finance and Administration, is a former chief financial officer of and owns stock in a Genstar Corporation subsidiary, Sutter Hill, Ltd., which deals predominantly in real estate.

Because of FADA's visibility, any appearance of a conflict raises concerns especially when FADA executives' financial interests involve loans from troubled institutions which FADA manages and stock in real estate investment and development companies.

FADA's ineffectiveness in communications and cooperation with FSLIC's receiverships

FADA's tendency to view itself as independent of FSLIC may be the driving force behind its lack of communication with FSLIC's receiverships. Through numerous interviews and discussions with FSLIC officials, Committee investigators consistently heard about incidents reflecting the need to increase communication between FADA and FSLIC and, even with FADA, to avoid duplicative work.

In contacts with FSLIC officials, they acknowledged the need for improved communication between FADA and FSLIC. Recognizing that a considerable reason for the communication hiatus stemmed from a combination of the Bank Board's and FSLIC's unwillingness and inability to define a strong relationship between FSLIC and FADA, FSLIC officials earlier this year evaluated FSLIC employees' concerns regarding the FSLIC/FADA relationship.

One issue of significant importance to FSLIC regarding the FSLIC/FADA communication hiatus is FADA's attitude towards and insistence on obtaining total control over asset litigation although FSLIC houses asset litigation experts aware of FSLIC's "superpowers" regarding the latest legal cases and regulatory authority governing FSLIC. The Committee is aware that FSLIC has met with FADA to discuss the need for open lines of communication among FADA, OGC, outside fee counsel, and officials and counsel of savings and loan institutions where FADA engages in an asset advisory/management contract. It appears that FSLIC's commitment to improve communication with FADA has been countered by FADA's direct and implicit efforts to exert independent and autonomous tendencies.

FSLIC receiverships have experienced problems with FADA in the day-to-day management of assets. For instance, FADA has refused to provide itemized costs or operating statements to the receiverships. FADA's policy is such that it will provide receiverships with summary expense reports and, if receivership personnel so desire, they may inquire about specific payments or review the supporting documentation at FADA's offices provided such inquiries are reasonable. To date, many receiverships have not received detailed operating statements or supporting documentation to justify the bills or invoices they have paid. FSLIC officials believe that FADA should provide FSLIC receiverships with all necessary supporting documentation, including invoices and operating statements, regardless of what FADA perceives is best.

In another instance, FADA has denied receivership personnel copies of contracts FADA negotiates with subcontractors. FADA does not believe that receiverships need such contracts since receiverships have the standard asset management contracts. However, FADA has agreed to provide FSLIC with contracts if FSLIC officials and/or staff would be amenable to briefings by FADA. Given that other contractors provide FSLIC with copies of contracts, FADA should, at the very least, comply with the established policies. Receivership personnel believe FADA should provide them with the original contracts, detailing those aspects which deviate substantially from the standard contracts. In general, receiverships request contracts to enhance their knowledge of the subcontractors' general rights and obligations, fees charged, and services rendered.

In discussions with receivership officials regarding FADA's asset management and communication of its work efforts, the Committee was told that FADA rarely, until recently, communicated with asset managers in receiverships unless emergencies arose. Additionally, FADA consistently failed to consult with the receiverships concerning subcontractors it selected to appraise FADA-managed assets, and FADA has not kept the receiverships informed regarding its plans and activities as outlined in its contract. Receivership officials stressed that FADA has not provided them with information on the current status of assets.

In view of FADA's resistance and unwillingness to communicate with FSLIC, Committee investigators have observed FADA's extensive efforts to promote an overall positive image. It appears that FADA's primary objective is to survive at whatever cost to the FSLIC insurance fund. FADA accomplishes this goal through an extensive promotional campaign intended to eliminate any negative information presented to the public regarding its structure, operations, and performance. FADA promotes itself by publishing puff articles which mislead the reader by presenting information that conveniently excludes most of the facts. FADA then packages such publications for delivery to the United States League of Savings Institutions, state savings and loan organizations, and other savings and loan lobbying groups. Subsequently, FADA promotes this information to Congressional members and the press through its in-house public affairs and Congressional relations staff and its extensive use of media contacts.

Unfortunately for the Bank Board and FSLIC, when FADA promotes itself it does not inform either party when, where, or what it plans on revealing. As a result, FADA makes statements on subjects that the Bank Board has not formally approved and statements that are generally inaccurate and portray FSLIC in an unfavorable light.

FADA disregards FSLIC's fiduciary responsibility

Given that FADA acts as a Bank Board/FSLIC agent with a fiduciary responsibility to the creditors and depositors of troubled and failed institutions, it should be accountable to the Bank Board and FSLIC. FADA not only manages portfolios of these troubled and failed institutions, but FADA also formulates policy and procedures which deviate from those of FSLIC, and ultimately impacts negatively on FSLIC's ability to carry out its responsibilities.

Based on Committee investigators' discussions with FSLIC senior officials and receivership officials, FADA apparently refuses to participate responsibly in assuming FSLIC's fiduciary responsibility. In the following three instances FADA officials expressed that FADA is not accountable to FSLIC and, thus, jeopardized FSLIC's responsibility in its role as receiver. The following examples center around the fact that FADA has acted in its best interest but ignored FSLIC's policies and procedures and specific provisions in the FSLIC/FADA asset management agreement.

In the first instance, FADA incurred significant costs without obtaining FSLIC's approval of its business plans. Specifically, FSLIC requires any subcontractor, including FADA, to present its business plans to FSLIC's Business Plan Review Committees for discussion and final approval. FSLIC officials, however, must approve a preliminary business plan before FADA incurs any costs, other than those reasonable costs associated with preservation of the asset. However, FADA has charged receiverships expenses significantly greater than those needed to preserve assets, before obtaining their approval of business plans. FSLIC officials interviewed believe that FADA has made a conscious decision to forego approval of business plans and incurred significant costs because, in many instances, plans were incomplete.

In the second instances, FADA ignored FSLIC policies and procedures and negotiations reached in the FSLIC/FADA Asset Management Agreement by selling or restructuring assets with potential buyers and borrowers, respectively, before FSLIC's review committee had a chance to review and approve the final management and disposition strategy. The Committee learned of several instances wherein FADA presented completed deals for FSLIC's review committees to approve, rather than presenting the specific details of an offer and allowing the committees to openly discuss the appropriate actions based on FSLIC's best interest.

In both cases, FADA, acting as an agent for FSLIC, implemented asset management and disposition decisions without FSLIC's approval and, hence, made FSLIC accountable for actions it undertook regardless of the outcome. As FSLIC officials informed Committee investigators, FSLIC only requires that FADA honor the terms of the FSLIC/FADA Asset Management Agreement and follow FSLIC's established policies and procedures, with respect to asset management and disposition, required of all other FSLIC subcontractors. According to a FSLIC official, if FADA formulates sound business decisions then FSLIC will have no problem in approving those decisions, but FADA should follow the established procedures to protect FSLIC's assets. Instead, FADA's current mode of operation appears to bypass all authority and places FSLIC in a position to assume more liability which, according to FSLIC officials, is both irresponsible and unconscionable.

In a third instance, the May 22, 1987, minutes of the FSLIC/FADA Coordination Committee meeting illustrate the position of a FADA vice president regarding FADA's fiduciary accountability to FSLIC receiverships:

"The FADA position [is] that FADA is not just another contractor. FSLIC owns 100% of the stock of FADA. Both are working for the same purpose. For FSLIC to review FADA business plans is like FSLIC reviewing FSLIC business plans: presumably it will be satisfied with its own work. Technically the FSLIC Review Committees do not have the authority to renounce or disapprove FADA business plans, since only the Director of FSLIC has that authority."

FADA's interpretation of the Asset Management Agreement implies that if the FSLIC director does not review business plans, then no FSLIC review of FADA's business plans is appropriate. Obviously, FAA does not recognize the FSLIC director's authority to delegate responsibilities to the review committees. The Committee questions why FADA seems to expect the FSLIC director to treat FADA differently from other contractors and review FADA's 100-page business plans, even if they are

leatherbound! In reality, business plans prepared by receiverships and other contractors are all reviewed and approved by such committees.

FSLIC receiverships' concern, and rightly so, is that they want to feel comfortable with their authority and duties in meeting their responsibility for liquidating FSLIC assets and, thus, minimize the receiverships managing officers' personal liability for assets. In carrying out their asset management responsibilities, receiverships are looking to treat FADA and its business plans just as they treat other subcontractors and their business plans. Unfortunately, FSLIC, in implementing its oversight function of FADA, has encountered resistance from FADA.

In summary, FSLIC originally intended that FADA serve as an entity directly accountable to FSLIC which would perform as a major subcontractor similar to those currently used by FSLIC. Contrary to the intended framework as delineated by FSLIC, FADA's organizational structure has changed considerably from a relatively small group of "private-sector experts" to a large bureaucratic organization. As FSLIC's deputy director informed FSLIC's director in an October 1986 memorandum:

"FADA is a privatized government function, not a private corporation motivated by private purposes and profit. It is a FSLIC cost center whose only connections with private attributes are its ability to pay commercial rates for salaries and expenses, and to be able to contract without being bound by government contracting rules. FADA is another governmental bureaucracy dressed up in private sector clothes. Its driving motives are more closely related to those of a government agency than to the profit motive associated with private business. There is no FADA bottom line. FADA does not succeed or fail based on its lack of profits. FADA must be subject to the same internal control principles that govern any government agency or office of the Bank Board."

Unfortunately, the Bank Board must not have been in dialogue with FSLIC's directors and deputy directors; otherwise, the Banking Committee might have seen some substantive policy and structural changes to strengthen the FSLIC/FADA relationship, particularly FSLIC's ability to exert its asset management authority and powers over FADA as FSLIC has with its receiverships.

Only by defining the accountability of FADA to FSLIC can a healthy relationship between FSLIC and FADA develop; otherwise, the Bank Board should expect for two entities to continue to jockey for power and authority. Within and between the organizations, this power play may negatively affect work attitudes and morale and how they accomplish their asset management and disposition work which is to maximize the return to FSLIC and, in so doing, protect FSLIC and the Bank Board's fiduciary responsbility and maximize the interests of their creditors.

CHAPTER XI—FADA RESISTS PUBLIC AND CONGRESSIONAL SCRUTINY

As part of the House Banking Committee's general oversight function, all banking related activities are continually monitored. However, the Bank Board, FSLIC, and particularly FADA, have balked at Government regulations ensuring that FADA's operations be subject to public review, have ignored questions raised by Committee members during hearings, and have delayed information requests by Committee investigators.

The House Banking Committee's first encounter with FADA

The Committee first dealt with FADA in early 1987, when FADA strongly contested certain oversight provisions proposed in H.R. 27, the FSLIC Recapitalization Act. Section seven of H.R. 27, as originally structured, required that FADA be audited by GAO, open its board meetings under the Sunshine Act, and report to Congress on a quarterly basis.

Major savings and loan executives on FADA's board also lobbied the Committee heavily. For example, on January 28, 1987, Mr. Tom Bomar, a director on FADA's board and president of Amerifirst Savings and Loan Association, a $4 billion Florida institution, wrote to Chairman St Germain and other members on the Committee on behalf of FADA's concerns. Specifically, Mr. Bomar challenged the Committee's provisions stating that ". . . there seems to be no good reason to have GAO audit FADA" since FADA was not a mixed ownership government corporation and should not fall under the jurisdiction of the Sunshine Act. In his letter, Mr. Bomar expressed the following statements:

"FADA is a federally chartered savings and loan, subjected to all the requirements of all federally chartered Savings and Loans. There seems to be no good reason to have GAO audit FADA. However, if that is thought desirable, it is of no particular consequence other than to cost FADA a little extra time and trouble dealing with another set of auditors.

"I am unsure as to what significance there is in saying that FADA is a mixed-ownership government corporation. It is a mutual Savings and Loan. It was organized by a group of private individuals acting at the request of the Bank Board, but all the money put into it is FSLIC funds and Federal Home Loan Bank borrowing. That does make its status somewhat unique.

"The provision of having FADA subject to the 'Sunshine' law is potentially very damaging. All of us are in accord with the objectives of the Sunshine law. No group of elected or appointed officials has any business doing the public's business in secret."

Mr. Bomar described FADA as a private organization with experts in problem assets trying to work out complex business transactions to recover a maximum return for FSLIC, not as an organization engaged in any public business. Thus, he concluded, since FADA is not a "public" organization, it should not be subject to the Sunshine Act. While FADA's private status has allowed it to exclude certain parties from FADA board meetings, representatives from the U.S. League of Savings Institutions were present when FADA's first CEO was selected.

As a wholly-owned subsidiary of FSLIC, FADA should fall under the full scrutiny of Congress, the U.S. General Accounting Office and the Sunshine Act, and thus, be fully accountable to the American public. The relationships between and among the Bank Board, FSLIC, and FADA needs to be redefined so that FADA is fully accountable to FSLIC and the Bank Board. Although FADA was intended to be subsidiary of FSLIC, FADA has, in fact, heavily influenced policy making at the Bank Board and FSLIC through its senior-level officials including its board of directors.

On March 3, 1987, the Committee invited Ms. Roslyn Payne, FADA's President and then Chief Executive Officer, to testify on H.R. 27's oversight provisions. Ms. Payne stated that FADA could not understand why it was the center so such debate, especially since it was chartered as a savings and loan and not as part of the federal government. She said that FADA had several concerns, clarifications, and suggested modifications regarding its review by Congress and GAO and that "the implications of applying this extremely broad based Government Corporation status on FADA may well effectively erode its ability to achieve the highest values for the FSLIC for troubled real estate assets."

Ms. Payne testified that the open meeting requirement of the Sunshine Act would:

"severely restrict and inhibit the ability of FADA management and Board of Directors to perform its asset management and disposition duties. The Board of Directors openly and candidly discusses the relative strengths and weaknesses of various troubled savings institutions and real estate markets. If these discussions become public, the ability of the FADA to obtain the highest value for troubled real estate assets would plummet. Moreover, public confidence in the safety and soundness of the savings and loan system would be severely shaken. This would have a devastating effect on local communities if runs on thrift institution deposits occurred."

Given the applicability of the Sunshine Act to FADA, the sentence to underscore is "the Board of Directors openly and candidly discusses the relative strengths and weaknesses of various troubled savings institutions and real estate markets." An agency under the Sunshine Act appropriately limits public meetings to general problems with asset management or disposition operations and policy as do the Bank Board, FSLIC, and the Federal Deposit Insurance Corporation.

As a result of FADA's persistence and lobbying efforts, the Banking Committee reexamined its position and did limit the Congress' and GAO's review authority of FADA. It appears that FADA does not mind GAO reviewing its books as long as it is not classified as a government agency, which would detract from its privatized view of itself and would require FADA to serve in the public's best interest by being subject to government regulations.

From the beginning FADA was less than responsive

On March 18, 1987, the Committee, as part of its monitoring efforts, requested that the Bank Board provide information on how it was overseeing FADA as well as information on FSLIC and FADA operations and asset management activities.

Committee investigators found that the Bank Board, FSLIC, and FADA were unwilling to respond to the Committee's March request. On May 7, 1987, Ms. Roslyn Payne wrote to the Committee on FADA's behalf regarding documents which FADA had not yet delivered to the Committee. Not only did FADA delay its response to the Committee, but Ms. Payne also cited sections of its March 31, 1987, Business Plan Update, its quarterly publication, rather than meet the Committee's specific requests for information. It appears that FADA waited until it prepared its March update to fulfill the Committee's request and then intentionally delayed its response and delivery of information until May 1987.

FADA has not been alone in its efforts to foil the Committee's investigation. The

Committee requested information from the Bank Board in March 1987. At that time, the Committee was assured that it would receive the information quickly. In response to the Committee's March request, the Bank Board recently stated that the requested reports are being prepared by FSLIC and FADA in compliance with the Competitive Equality Banking Act of 1987 (CEBA), and will be provided to the Committee in March 1988. The Committee is extremely disturbed by the year-long delay and is concerned that the planned reports will not fulfill the Committee's specific requests made in March 1987.

To show that FADA has repeatedly ignored information requests made by this Committee and has stalled in providing such information, the Committee refers to the following chronology of events. In an interview with a senior FADA official on May 14, 1987, at which time Committee investigators requested additional documents regarding FADA's operations and structure, and even after placing several telephone calls to various FADA and Bank Board officials, Committee investigators did not receive a written response until May 28, 1987. In its response, FADA delivered only two of the documents requested, with no reference therein as to the delivery of the more important documents still outstanding.

On June 17, 1987, the Committee received a sample listing of FADA's senior executives' salaries. As the request fell short of meeting the Committee's distinct request for the names, salaries (plus bonuses), and titles of FADA senior executives nationwide, the Committee renegotiated its request with FADA once again to include employees' earning $70,000 or more annually.

In avoiding the specific request on salary information by offering to send alternative data to the Committee, FADA even suggested meetings amongst the Committee staff director, FADA senior officials, and an attorney representing FADA's outside counsel, Arnold and Porter, to discuss FADA's cooperatives in meeting the Committee's requests. In a July 8, 1987, letter from Arnold and Porter delivered by FADA to the Committee's staff director, FADA's counsel stated that:

"FADA has asked that this information be treated on a confidential basis by the Committee; we want to avoid a needless breach of privacy of employees, particularly at the middle management level."

FADA encouraged the Committee to negotiate with Arnold and Porter, FADA's outside counsel. FADA's high-priced prestigious outside counsel agreed to provide the Committee with a list of FADA's 17 senior executives' salaries and bonuses. It was clear that FADA would not deal with the Committee directly on this issue.

During this same time frame, the Committee began to receive telephone calls and correspondence from other Congressional members who were receiving calls from constituents regarding FADA's operational practices and performance. Based on the magnitude of calls forwarded to this Committee from other Congressional members' offices, coupled with the complaints received by this Committee, the Committee intensified its oversight efforts of FADA.

On July 16, 1987, Chairman Fernand J. St Germain announced a "full-scale, top-to-bottom" investigation of FADA's operational practices and performance. The investigation focused on FADA's asset management and disposition activities as implemented through its asset management agreements with FSLIC receiverships and FADA's asset advisory and management agreements with institutions in FSLIC's management consignment program. Both agreements cover FADA's asset management and disposition duties, responsibilities, and authority. As Chairman St Germain said in his announcement, "It is absolutely essential that the Congress makes certain that this agency is properly structured and that it understands its mission."

FADA refuses to cooperate with the House Banking Committee's investigation

From the first moment Committee investigators stepped into FADA's "corporate" offices, they encountered unacceptable delays in obtaining information, less than truthful officials, and other tactics which this Committee believes were intended to impede the Committee's inquiry. Roslyn Payne obtained the services of the law firm of Akin, Gump, Strauss, Hauer and Feld and others to counsel FADA on "how best to deal with the Committee's inquiry." Two examples demonstrate the combative atmosphere Committee investigators encountered.

At the Committee investigators' first meeting with FADA officials on July 28, 1987, at FADA's San Francisco headquarters, the Committee set forth its policy for obtaining documents from FADA: Committee investigators would place requests in writing and FADA would expedite the requests, transmitting documents to the Committee when necessary. Almost immediately, however, FADA began negotiating with Committee investigators because FADA wanted requests to be reviewed by its attorneys before relinquishing information to the Committee. After several rounds of negotiations, FADA endorsed the following procedure: FADA's in-house attorneys would review all documents requested by the Committee, FADA would send such documents to the Bank Board for its review, and finally, the Bank Board would forward such documents to the Committee. As a result of this bureaucratic procedure, the Committee received its requests in a most untimely fashion, if at all.

Only after repeated phone calls were made by the Committee staff director to Bank Board officials, including Chairman Wall, did the Committee receive any of the documents. Almost no information was provided to the Committee until September 14, 1987, with additional shipments made through September 21, 1987. Certain key documents have not arrived as of this writing.

Following standard procedures, Committee investigators in July 1987 scheduled a series of interviews with FADA employees in the San Francisco office. FADA, operating on instructions from Ms. Payne, immediately sought to have all interviews monitored by a FADA attorney. Declining to abandon Committee procedures, staff investigators objected to the monitoring. After lengthy exchanges, it was not until September 16, 1987 that FADA finally agreed to unchaperoned interviews by the Committee.

During September 1987, the Committee negotiated with FADA and agreed that FADA attorneys would not sit in on interviews between FADA staff members and Committee investigators and that FADA would simultaneously provide the Bank Board and the Committee with copies of documents in an effort to expedite information requests. This arrangement worked well until Committee investigators requested updated information earlier this year with FADA officials in Dallas. The procedure for requesting documents from FADA has apparently changed, and, once again, at FADA's behest. FADA officials informed Committee investigators that if they wanted information from FADA field personnel or from headquarters, (1) they were to request such information from FADA headquarters, which would then obtain the information from its regional offices or headquarters office, (2) a copy of such information would be sent to the Bank Board for its review (3) the Bank Board, in turn, would forward a copy to Ms. Julie Gould, the senior vice president of FADA's Washington, D.C. office, and (4) upon Ms. Gould's review of the documents, copies of the requested documents would be delivered to the Committee. Under this new procedure the Committee experienced severe time delays.

The Committee continues to encounter changes in FADA's procedures regarding documents requested. Between January 5 and January 14, 1988, Committee investigators requested FADA's financial statements and information supporting its 1987 year-end asset sales and loan transactions (the latter constituting information outstanding to the Committee since March 1987). FADA consistently informed Committee investigators that the supporting documentation was not available, even though FADA released information to other Congressional members in a letter dated January 22, 1988.

As a result of the Committee's latest request, FADA has changed the procedure for handling document requests once again, only this time it is due to FADA's senior official's hesitation in providing information relating to its financial position or asset sales to this Committee. In addition to the previous procedure that stipulated that all requests must be placed at FADA headquarters, routed to the Bank Board, reviewed by FADA and the Board, forwarded to FADA's senior official in Washington, D.C., for review before being delivered to the Committee, FADA now requires that the Committee place all requests with FADA's Senior Vice President for Finance and Administration. As a result, FADA is prohibiting Committee investigators from contacting the appropriate office pertaining to the nature of the request, which, consequently, causes misunderstandings regarding the materials requested, not to mention lengthening the wait for the Committee.

Regarding the Committee's latest request, a FADA senior official informed Committee investigators that 70 percent of the request was "new" information which had not been previously requested by the Committee. However, the Committee requested these documents in writing on January 11, and January 12, 1988. Furthermore, a significant number of the documents were not provided until six to eight weeks after initially requested.

To the Committee's dismay, FSLIC joined FADA in its efforts to frustrate the investigation of FADA. FSLIC senior officials in Washington, D.C., instructed their receivership personnel to withhold any information from Committee investigators without first routing the Committee's request through FSLIC headquarters for senior officials' review and approval. Additionally, the Committee recently learned that the Bank Board ordered FSLIC to instruct its receivership personnel to:

"Do all within their ability to make FADA work"

"Discontinue documenting FADA's poor performance or problems with its structure

"Discontinue any negative discussions with Committee investigators regarding FADA and

"Inform Chairman Wall, in writing, through the Bank Board's Office of Congressional Relations, of any documentation requests made by the House Banking Committee."

Employees are pressured to withhold information from the committee

FSLIC employees are afraid of being and have been labeled "whistleblowers". This perception is founded in the directives they received from senior FSLIC officials. FSLIC employees have been told (1) do not talk with Committee staff, (2) do not criticize FADA verbally or in writing, and (3) be positive about FADA. Several specific examples follow.

Prior to scheduled meetings with the Banking Committee, the Regional Director and his employees in FSLIC's Southern Regional Office received a memo stating that after all conversations with Committee staff they must write a report detailing who they spoke with, the name of everyone that participated in the conversation, and what was said. The report was to be forwarded to FSLIC headquarters.

In the middle of an interview with a receivership employee, the employee received a phone call stating that her superiors knew she was in an interview with Committee staff and that she would have to report back everything that was said in the interview. Needless to say, the employee did not feel comfortable in continuing the interview.

After gathering numerous reports documenting their concerns regarding FADA and preparing this documentation for Committee review, FSLIC officials were not allowed to bring this documentation to the interview. They were told that anything prepared for the Committee would first have to be sent to the Bank Board which, ironically in many cases, sent the documentation back down to FADA for review, and analysis. Thus, FSLIC officials who prepared the documentation did not know whether the Committee received all of the information, and whether the information had been censored or revised.

While at a FSLIC event, employees told Committee investigators that they could not be seen talking to or even standing near us in fear that supervisors may be watching.

It is a sad story when an entity such as FADA, supposedly auxiliary in nature, can exert the type of influence and pressure over its governing body—FSLIC—to the point where dedicated employees must fear for their careers and the right to succeed on the merit of their performance.

CHAPTER XII—EFFORTS TO REFORM FADA

The Committee's inquiry into FADA's operations has revealed numerous areas of concern: the lack of real estate expertise; inept managerial leadership; ineffective asset management, marketing, and disposition; lack of internal policy, procedures, and guidelines; unresponsiveness to potential buyers; favoritism in selecting contractors; high overhead costs; lack of long-range planning; and inordinate delays in the sale of real estate.

In order to provide Congress the opportunity to evaluate these concerns as well as the overall economy and efficiency issues, the Subcommittee on Financial Institutions Supervision, Regulation and Insurance held a hearing on FADA on October 15, 1987. Bank Board Chairman Danny Wall was called to testify.

In their opening remarks, members of the Committee expressed concern over the performance, operations, and structure of FADA. Many members stated that they were not looking for Mr. Wall to present a quick fix. Instead, the members emphasized that they wanted an opportunity to discuss the Bank Board's present system for dealing with problem and failed thrifts and to address the problems being encountered by FADA.

A number of members stated that FADA, as currently structured, could not work and, thus called for FADA's abolishment. Congressman Steve Bartlett (R-Texas) stated, ". . . we need to decide whether FADA is fish or fowl, we need to move to either making it work or abolishing it, but nothing in between." Congressman Frank Annunzio (D-Illinois) went as far as to call for the resignation of Roslyn Payne, FADA's president and former chief executive officer. He stated that:

"Ms. Payne's management of FADA has been sorely lacking. She has not brought strong management to FADA. Ms. Payne may run but she can't hide from the facts. The facts make it clear that under her management FADA's operations have been a fiasco. Rather than increasing FSLIC liquidity, it has drained money from FSLIC. Rather than disposing of properties more efficiently than FSLIC it has done worse. Rather than streamlining the disposition process and cutting red tape, it has discouraged purchasers."

In addition to concerns expressed by members of the Committee in their opening statements, members also posed several fundamental questions to Mr. Wall such as:

Has the Bank Board established FADA under an appropriate framework?

Can the Bank Board's current system of managing and disposing of assets work with FADA? Are the FSLIC and the public generally well served by FADA performance?

If FADA is allowed to continue, what changes should be made to the organization and the Federal Home Loan Bank system?

If FADA is abolished, is there some other avenue the Bank Board can take to solve the needs of FSLIC?

Mr. Wall responded to the concerns and questions of Congressional members by asserting that he believes there is a need for a FADA. He also attempted to clarify the relationship between FADA and FSLIC by stating that FADA's objective is to assist FSLIC.

These statements were not sufficient to ease members' concerns, and intense questioning regarding FADA's performance ensued. When questioned if he were to give FADA a grade what might that grade be, Mr. Wall conceded that FADA's performance to date would rate a "D". He also acknowledged that the relationship between FADA and FSLIC needed to be improved and that FADA should be accountable to FSLIC and the Bank Board.

Chairman Wall outlines changes at FADA

To address the members' concerns, Mr. Wall outlined structural changes the Bank Board and FADA's board of directors had discussed on the night before the hearing and decided to implement in an effort to redirect FADA and put it back on track. The structural changes included:

Requiring Roslyn Payne to step aside as CEO although she would retain her title of president and her $250,000 annual salary. Instead, she would focus her efforts on real estate workout, her area of expertise.

Clearly and precisely establishing that the FADA and FSLIC relationship would be one of contractor and client, respectively.

Changing FADA's fee structure to eliminate questions regarding the incentive FADA may or may not have to sell or hold property.

Requiring regular meetings between FADA's board of directors and the Bank Board.

Reviewing the compensation schedule for FADA employees with any recommendations and changes implemented on January 1, 1988.

Requiring no further hiring for the foreseeable future so as to eliminate any question as to whether FADA is growing.

Developing clearer policy statements regarding FADA's responsibilities.

The Committee questions whether the Bank Board proposed changes in FADA only to diffuse negative criticism. To the Committee's knowledge, no substantive changes have been implemented. As of the writing of this report, Committee investigators have been informed of only one action taken by FADA at the request of the Bank Board, the removal of Roslyn Payne. Ms. Payne relinquished her title of CEO but continued to represent FADA and determine policy under her new title of President and Chief Operating Officer. Recently, the Committee was informed that FADA again changed Ms. Payne's personnel status by relieving her of all responsibilities. Until recently, Ms. Payne served as a consultant to FADA.

According to the Bank Board's Office of Congressional Relations as late as January 29, 1988, Committee investigators were informed that the other changes have not yet been considered. Even the one change that needed no additional direction, the immediate hiring freeze to guard against further questions about FADA's organizational growth, was ignored by FADA. As a result, FADA has continued to grow and, since Chairman Wall's announcement, FADA has hired 53 new employees. On February 4, 1988, before the House Banking Subcommittee on General Oversight, however, Chairman Wall testified that these hirings occurred under the previous administration, indicating that the new hires occurred prior to his announcement of the hiring freeze last Fall.

FADA's proposed asset management contract

The Committee understands that the Bank Board is considering the adoption of a new asset management contract between FADA and FSLIC's receiverships. FADA and its board of directors originally felt that the fee structure under the current contract was sufficient compensation for all aspects of asset management, marketing, and disposition with minimal asset maintenance costs passed on to the receivership. Unfortunately, FADA has lost $15 million in addition to directing the receiverships to incur $50 million in subcontractor expenses.

The Committee believes that FADA, its board of directors, and savings and loan representatives supporting the association used their leverage with the Bank Board to force FSLIC into a new contract which would ensure that FADA breaks even regardless of the costs.

Despite eighteen months of complaining about the current contract which allowed FADA to reap fees for any expenses it incurred, FSLIC and its receiverships' complaints may have fallen on deaf ears. Com-

mittee investigators believe the proposed contract is in FADA's favor. Although the Bank Board had denied the Committee access to the specific fee structure as presented in the contract, the Committee's investigators understand that FADA will be allowed to recoup all prior losses under the current contract and in the future be given whatever fees necessary to allow FADA to break even.

Under the specific terms of the proposed contract, FADA will receive 50 basis points on the total book value of managed assets instead of 75 basis points. Also, the contract provides that FADA, for the first time, will receive asset disposition fees, beginning at 1.25 percent the first year, 1.25 percent the second year, and remaining constant thereafter at one percent.

Even though the Committee does not know the impact of these new fee changes, investigators believe that on the surface such changes appear to financially place FADA in a better position than under the current contract and place FADA ahead of the contracts that FSLIC had negotiated with private-sector firms in the past.

Unfortunately, the proposed contract also allows FADA to receive substantial fees based on the technical support provided to FSLIC. The type of technical support includes such aspects as identifying, engaging, and monitoring appraisal work as well as reviewing appraisals for accuracy, and expanding the use of FADA's expertise in the area of participation assets.

FADA's fees will increase and the bottom line is that FSLIC will suffer even greater losses. For example, repricing the portfolio of the Vernon receivership under the terms of the proposed contracts will result in fees totalling $27.3 million more than the total amount using the current contract. (See Attachment 7.1) These figures are based on a detailed analysis performed by FSLIC officials who not only calculated the amounts using the basic asset management fee but also considered factors such as the discount rate, inflation rate, rent, utilities, and overhead costs.

FSLIC also performed an analysis factoring in the salaries and benefits for the 48 FADA employees assigned to Vernon although Dallas District Bank officials informed Committee investigators that FADA, when performing asset management services at Vernon prior to its second closure on November 20, 1987, had at least 88 employees. The analysis indicated that if the 48 FADA employees at Vernon, with their current salaries and benefits packages, were incorporated into the receiverships, instead of using FADA as an outside contractor, FSLIC could have saved $17.4 million for the same time period.

Clearly, this analysis indicates that FADA's fees will be exorbitant under the terms of the proposed contracts.

According to Chairman Wall's testimony on February 4, 1988, before the House Banking Committee's Subcommittee on Oversight and Investigations, the Bank Board supported the proposed contract. As such, the Bank Board places FSLIC's creditors, essentially, the taxpayers, in a position of subsidizing FADA's excessive expenses and its inadequate performance.

The Committee understands that Chairman Wall has made preliminary attempts to reform FADA. He has been briefed several times by FSLIC and receivership officials, FADA's San Francisco representatives, and FADA's board of directors regarding FADA's structure, operations, performance, and interaction with FSLIC. Chairman Wall has also commissioned numerous studies and investigations from outside consultants, FSLIC staff, and the Bank Board's Office of the Inspector General. Bank Board efforts to date, however, have not resulted in substantive changes in FADA's relationship to FSLIC or in its operations and performance. Unfortunately, as a result, FADA remains unscathed and its government affiliation remains unclear.

CHAPTER XIII—CONCLUSIONS

Based on the Committee's extensive investigation into the operational practices and performance of FADA, the results are conclusive. FADA as presently structured has not been, and in all likelihood could never be, a cost-effective solution facilitating the maximum recovery for FSLIC. Maintaining two separate bureaucracies—one under direct government control and the other outside of all prudent checks and balances—is inefficient, wasteful and insupportable. The Committee has found FADA to be an organization out of control, ignoring FSLIC and its own established policies and procedures. Rather than maximizing recoveries for FSLIC, FADA through 1987, has cost FSLIC millions of dollars in asset management fees, subcontractor costs and administrative expenses. Listed below is a summary of the findings identified through the Committe's investigation of FADA.

The Savings and Loan Industry Played a Major Role in the Development of FADA and Continues to be Influential in its Structure and Operations.

The Bank Board's decision not to support FSLIC's request to expand its resources set the stage for formation of the new entity.

FSLAC—the industry advisory council—moved into the vacuum with the proposal to form FADA. Key to the birth was FSLAC's insistence on a broad interpretation of Section 406 of the National Housing Act as the legal basis for creation of FADA.

It appears the Bank Board did little more than rubber stamp the industry's legal handiwork declaring FADA's birth legitimate.

The industry's influence became overwhelming in the selection of the members of FADA's board of directors. Nine of the eleven members of the board are drawn directly from the savings and loan industry. A tenth member—who became Chairman of FADA—was also Chairman of FSLAC and was from a large law firm long involved with the savings and loan industry.

FADA's Structure and Mission Are Unclear and It Appears That the Bank Board Did Not Establish Any Formal Guidelines Regarding FADA's Creation and Operations.

The Bank Board's and FSLIC's official statements, whether through omission or by intent, lack precision and clarity in defining FADA's mission and objectives and in establishing the parameters within which FADA was to operate.

Because of the Bank Board's unwillingness and FSLIC's inability to exert their authority, FADA succeeded in establishing an autonomous bureaucracy.

In spite of the numerous and serious concerns raised throughout FSLIC and the receiverships, the Bank Board seems committed to guaranteeing FADA's existence and expansion.

The Bank Board encouraged FADA to establish its role as an exclusive contractor for FSLIC by requiring the receiverships to rely solely on FADA's services, often against the judgment and counsel of senior FSLIC officials.

FADA's Asset Management Performance Has Been Uninspiring and in Some Cases Inept.

FADA business plans are of poor quality and are submitted in an untimely manner.

FSLIC receiverships had to assume FADA responsibilities and some duplication of effort occurred because of FADA's laxness in performing its management duties. This inefficient use of resources resulted in the dissipation of receivership funds.

FADA has neglected to protect and maintain properties which resulted in financial losses and potential liability claims against FSLIC receiverships. The receiverships also incurred excessive insurance premiums and taxes to protect assets in which they had no equity.

FADA lacked the technical knowledge necessary for understanding participation loans and the interpersonal skills necessary to negotiate with participants.

Since Its Inception, FADA Has Placed Little or No Emphasis on the Development of a Quality Marketing Program.

FADA eliminated the position of Vice President for Marketing.

FADA's program hinges on an inadequate marketing brochure and a nonstandardized marketing policy among its regional offices.

Several marketing recommendations have been suggested by FSLIC officials but FADA was unresponsive. It was not until January 1988 that FADA produced a document outlining new developments in its marketing program which contained the same FSLIC suggestions FADA was so reluctant to implement earlier.

Many potential buyers have become extremely frustrated with FADA's marketing brochures and/or policies and have chosen to discount FADA as a realistic alternative for purchasing assets.

FADA's Disposition Function Has Proven Extremely Costly and Time-Consuming and Has Not Accomplished the Goal of Maximizing the Return to FSLIC's Deposit Insurance Fund.

FADA's disposition philosophy conflicts with that of the FSLIC. FADA's objective is to place assets in a holding pattern while it negotiates with troubled borrowers in an attempt to restructure the loans. According to FSLIC officials, restructured debt is the worst option available. FADA's position is understandable, since no matter how long negotiations last or whatever the outcome, FADA still collects its asset management fees.

FADA submits recommendations that are inaccurate, in conflict with previous FADA recommendations made on the same asset, and inconsistent with FSLIC's goal to maximize net proceeds. Problems With FADA's Asset Disposition Activities are Evidenced in FADA's Lackluster Disposition Results.

Of the $583 million in completed transactions (representing only 10 percent of FADA's total portfolio of $5.3 billion), only $120 million are assets which were sold from liquidating receiverships.

Over half of the total property sales of $120 million represented one deal in which FADA became involved at the end of the negotiations when the buyer was already involved in acquiring the asset.

FADA has not lived up to its own sales expectations. As of September 30, 1987, FADA reported $1.2 billion in sales and loan workouts under contract or active negotiation. However, by year-end 1987, only $114 million or 9 percent, had been completed.

FADA takes full credit for all loan sales and loan payoffs, even though it did not initiate or make a significant contribution on all of the transactions.

FADA claims $275 million in successful loan restructures although several borrowers have again defaulted on their loans.

Out of Control Spending Has Resulted in FADA's Near Insolvency.

FADA has lost $15 million since inception and continues to lose $1 million a month primarily due to its excessive administrative expenses.

Since its inception, salary expenses have totalled over $22 million and under its current structure, salaries for the 32 senior executive positions alone during 1988 may account for over $3 million.

Since its inception, FADA's occupany expenses have totalled $2.2 million. FADA does not maintain office space in buildings owned by FSLIC receiverships. Rather, FADA leases office space in high-rent districts.

FADA's internal accounting controls are inadequate. For example, Ms. Payne submitted duplicate vouchers for the same trip on at least two occasions, resulting in an overpayment of $800. In addition, FADA reimbursed Mr. Robert Axley, former FADA General Counsel, over $1,200 for San Francisco hotel charges, even though he was assigned to the San Francisco administrative office.

FSLIC Receiverships and Private-Sector Firms Can Effectively Perform FADA's Current Asset Management Function at a Significant Savings to FSLIC.

An analysis of nine selected receiverships indicates that if FADA's services were terminated for 1988 alone, FSLIC could perform the work, using subcontractors when necessary, at a savings of at least $10 million.

Compared to the private-sector firms reviewed, FADA appears to be charging more in asset management fees and yet, it disposes of fewer assets.

FADA's extensive use of third-party contractors results in FSLIC receiverships assuming increased costs, increased responsibility for oversight of FADA's subcontractors' work, and less efficient services.

FADA's Performance at Vernon Federal Savings Association, an Institution Under the Management Consignment Program, Leaves Much to be Desired.

FADA's asset management contract was extremely costly.

FADA submitted poor quality and untimely business plans.

FADA's lack of cooperation and communication resulted in bureaucratic stagnation.

FADA refused to accept its fiduciary responsibilities, thus subjecting FSLIC receiverships to unnecessary legal liability.

FADA's Perception of Itself as a "Private Sector" Entity Fostered the Creation of a Separate Bureaucracy, exempt from Government Conflict of Interest Standards and Unresponsive to FSLIC.

FADA believes that it is a separate and private corporation subject only to the direction of its thrift industry-controlled board of directors.

FADA's desire to relieve itself of all accoutability to FSLIC and to operate as an independent entity, has resulted in FADA creating a separate bureaucratic structure with its own asset management policies and procedures.

FADA employee maintain active interests in real estate investment and development firms and ties to the savings and loan industry which are inappropriate. Government employees are prohibited from having such conflicts.

FADA has failed to communicate and cooperate with FSLIC receivership officials in the day-to-day management of assets.

The Bank Board and FADA Have Been Less Than Fully Cooperative With the Committee's Inquiry into FADA's Operations and Performance.

FADA balks at being subject to government policies which would subject its operations to Congressional and public scrutiny.

FSLIC and FADA employees were pressured to withhold information from the Committee.

Efforts To Reform FADA Have Been Superficial.

The Bank Board continues to delay addressing the basic concerns regarding the FSLIC/FADA relationship by directing endless investigations, studies and cosmetic changes.

Chairman Wall appeared before the Committee in October 1987 and outlined seven structural changes for FADA. To date, no substantive changes have been implemented.

FADA's proposed contract guarantees that all of its operating costs will be reimbursed, resulting in further losses for FSLIC and the creditors of failed institutions. FADA's services will be even more costly under the proposed new contract. For example, repricing the portfolio of Vernon Savings and Loan under the terms of the proposed contract will result in $16.9 million more in fees than using the current contract.

Overall, the findings of the staff inquiry draw a picture of an agency tied closely to the savings and loan industry, with limited vision of its public responsibilities, an even more limited performance, predilection for bloated bureaucracies combined with a penchant for secrecy. FADA is an agency that fails to meet even minimal standards for a Government agency carrying out essential public responsibilities.

ATTACHMENT 1.1

FEDERAL ASSET DISPOSITION ASSOCIATION—MEETING OF THE BOARD OF DIRECTORS, JANUARY 17, 1986

MINUTES

Meeting: A meeting of the Board of Directors of the Federal Asset Disposition Association ("FADA" or "Association" was convened in the Board Room of the Chicago Airport Westin Hotel, Chicago, Illinois at 8:10 a.m. on January 17, 1986.

Attendance by Directors: The following Directors were present: W.F. McKenna, Chairman; E.R. Biron; G.J. Levy; W.W. McAllister, III; G.E. Rice; D.B. Shackleford; J.B. Zellars; A. Vigna, ex-officio Dir.; L.B. Blaber, Jr., ex officio Dir.

Attendance by others; The following persons were present:

J.M. Buckley, Acting Secretary

Dirk Adams, Acting Counsel.

The following persons were present for relevant portions of the meeting:

Noel Fahey, U.S. League of Savings Institutions ("U.S. League").

Dennis Jacobi, U.S. League of Savings Institutions.

Ronald Walker, Korn-Ferry International.

Roger Stoy, Korn-Ferry International.

General session: The meeting was called to order at 8:10 a.m., CST.

Search Committee report: The first order of business was a report by Mr. McAllister, the Chairman of the Search Committee. Mr. McAllister reported that Korn-Ferry International, the recruiting firm, reviewed over 150 possible candidates, from which the top nine were selected. Those nine candidates were interviewed by the Search Committee and from that number, the three most qualified were selected for the full board of directors to consider. The three candidates chosen were: Phillip D. Winn, William Everett Kane, and Roslyn Braeman Payne. Mr. McAllister noted that Mr. Cashin, who was a member of the Search Committee, voluntarily did not participate in Mrs. Payne's interview by the Search Committee because her husband is a business partner of Mr. Cashin.

Board review candidates: The Board of Directors then proceeded to interview on an individual basis each of the candidates. After the interviews were completed, a lengthy discussion ensued regarding the candidates. Upon completion of the discussion, the following resolution was duly moved, seconded and unanimously adopted (with Mr. Cashin abstaining):

"Resolved, after due deliberation, the Board of Directors unanimously elect Roslyn Braeman Payne, subject to Federal Home Loan Bank Board approval, to be President and Chief Executive Officer of the Federal Asset Disposition Association."

Compensation: A discussion then ensued concerning the compensation of the Chief Executive Officer. Assuming the Federal Home Loan Bank Board concurs with the F.A.D.A. Board selection for Chief Executive Officer, it was agreed that the Search Committee be authorized to negotiate a final compensation agreement.

Consequently, the following resolution was duly made, seconded and unanimously adopted:

"Resolved, that the Search Committee is authorized to negotiate a compensation agreement with Roslyn Braeman Payne, on condition that the base salary is not to exceed $250,000 per annum, with a possible additional bonus based on performance not to exceed $150,000. Be it further resolved that the Search Committee is also authorized to negotiate as part of the compensation agreement, a separation agreement."

Mr. Biron and the members of the board then thanked Mr. McAllister and his committee for the outstanding job they did in bringing to the Board three candidates with exceptional qualifications.

Business plan: Mr. Biron who was appointed at the previous Board meeting to head up a special executive committee to develop a business plan, noted that a revised draft of a plan had been prepared based upon the guidance received previously from the Board of Directors. He noted that in preparing the plan, FADA had received assistance from several sources including Dennis Jacobi and Noel Fahey from the U.S. League, Joe Humphrey of the Federal Home Loan Bank of San Francisco, FSLIC staff members, and others.

ATTACHMENT 1.2

SEPTEMBER 30, 1987.

Hon. M. DANNY WALL,
Chairman, Federal Home Loan Bank Board,
Washington, DC.

DEAR CHAIRMAN WALL: —— and I very much enjoyed our discussions in your office on ——. Our company has a strong commitment to assisting the savings industry in the resolution of its extensive real estate related problems by providing to the FSLIC and individual savings institutions, evalua-

tion, asset management, and disposition services with regard to troubled loans and real estate. ——— provide real estate asset management and disposition services to ——— asset management services to troubled institutions, we have been intimately aware of the evolution of this complex and growing problem.

——— was a strong supporter of the creation of FADA. ——— Deputy Director of the FSLIC, originated the recommendation that ultimately became FADA. ——— was a member of the Bank Board at the time that FADA was authorized and led the Board's task force in its organization. Personally, I have consistently and publicly maintained my support for FADA and the efforts of Roslyn Payne. Recently, however, I have become increasingly concerned that FADA, in practice, is not following its intended business plan and will continue to be largely ineffective in achieving its goals unless its approach is modified.

As you invited us to do, let me review and expand upon some of the key areas of concern that we discussed at our meeting.

FADA SHOULD NOT BE VIEWED AS AN ALTERNATIVE TO PRIVATE SECTOR RESOURCES, BUT AS A WAY TO LEVERAGE THOSE RESOURCES

FADA was originally conceived as a master contractor/advisor to the FSLIC, composed of a highly skilled senior staff capable of effectively contracting with, managing, and supervising the resources available in the private sector. FADA was not intended to become a new massive quasi-governmental bureaucracy with hundreds of in-house employees attempting, by themselves, to manage the real estate problems of the industry.

In its letter to potential subcontractors dated August 20, 1987, FADA made clear that its "intention is to minimize subcontracting assistance while the asset is in a loan status." Moreover, FADA also emphasized that it views its potential subcontracting needs narrowly (i.e., primarily for REO and "certain components of the asset management process such as market analysis, on-site property management, leasing, etc."). The services and expertise of full-service asset management and capital recovery firms apparently are viewed as unnecessary.

I believe that FADA's approach in this regard is shortsighted. The vast majority of the industry's asset problems are currently in loan status, with estimates ranging in the tens of billions of dollars. For FADA even to begin to handle these problems effectively, it will need an ever-growing staff of extraordinary proportions. On the other hand, if FADA supervised the management and workout of these portofolios by private contractors with appropriate expertise, it would be able to keep the bureaucratic inefficiencies to a minimum, while gaining the benefit of free market competitive pricing.

FADA has already experienced an extremely rapid growth over the past year as a result of its attempts to manage much of the workout process itself. Such a rapid build-up of personnel would, even in the best of circumstances, lead to growing pains, disorganization, and other problems. There are simply not infinite numbers of experienced workout people in this country. Thus, it is extremely difficult to hire this many highly qualified personnel in so short a period of time without sacrificing quality. As a result, FADA has had to hire many people who do not have extensive workout experience and skills. Moreover, rather than utilize resources available in the private sector, FADA has been competing directly with private firms for asset management business, and even for consulting business. The success of FADA is dependent on the existence and health of private workout firms. FADA should not be using its leverage to compete directly with these firms for work.

FADA'S METHOD OF SELECTING CONTRACTORS

Despite the great fanfare attached to the development of a comprehensive, computerized, contractor questionnaire, FADA does not seem to use this data base of contractors effectively for the actual selection of firms. The ——— is one of the nation's largest and most experienced workout firms; however, we have yet to receive from FADA a single request for a proposal for work as a result of the questionnaire. In fact, in conversations with FADA staff, we have been advised that if we hoped to get work from FADA, we should make a point of repeatedly and personally soliciting FADA employees for work "as many other firms do."

There has been no effort by FADA to publish Request for Proposals on work available or to establish the criteria for qualifying for such work. Rather, by selecting firms from those that are actively soliciting business, FADA is subjecting itself to a self-defeating process whereby the more experienced and qualified firms (those that are busiest) are the ones which will not be receiving the work.

There also seems to be a considerable amount of favoritism as a result of the decentralized decision making process in the selection of work. Again, FADA staff has made it clear to several of our employees that it was necessary to develop friendships with the individual asset managers doling out the work.

Another problem with FADA's selection of subcontractors stems from its strategy of attempting to assign work exclusively based upon narrow specializations both geographically and by product type (e.g. apartments in Texas, hotels in Colorado). This approach, which seems to be a well-meaning distortion of the adage that "real estate is a local matter," creates several problems. First, many of FADA's assets are receivership assets which need to be administered as receiverships. By dividing or commingling these assets with other receivership assets, FADA is building in a necessary bureaucratic structure for itself.

Second, while real estate is a local matter, workout skills to deal with complex problem assets do not exist in many localities. FADA's approach ignores the reality that dealing with troubled assets is different than dealing with routine "healthy" real estate. Moreover, many of the problem assets are in localities in which the local real estate "experts" are precisely the ones that were involved in the creation of the problems.

There is no question that certain basic tasks of real estate (e.g. on-site property management, and other "local" oriented tasks) should be handled by local firms. However, the basic workout analysis, management, and strategy should be handled by experts, wherever they happen to be located.

FADA'S "PENNYWISE/POUNDFOOLISH" APPROACH

FADA places great emphasis on its ability to obtain a low absolute short-term cost for its subcontracting services. Workout services, however, are not fungible commodities. Particularly when dealing with millions of dollars worth of problem assets, small mistakes or errors of judgment based upon inexperience or lack of care and analysis can result in literally millions of dollars worth of lost recovery. The actual cost of workout services must take into consideration such qualitative factors.

FADA'S APPROACH IN SEPARATING THE BUSINESS PLAN PROCESS FROM ITS IMPLEMENTATION

FADA has repeatedly emphasized that it will not use the same firm to do a business plan and to implement that plan. Such an approach reflects a naivete about the nature of services involved in the successful workout of real estate assets. Several problems will result from this approach, including problems of unaccountability (i.e. did the implementation fail because of the business plan or the implementation? Fingers will be pointed both ways), inefficiency (a new party hired to do the implementation will have to go through a second learning curve), and added bureaucracy (FADA has to contract for, and supervise, two separate firms rather than one).

LACK OF PERFORMANCE CRITERIA AND ACCOUNTABILITY

Although the performance of an asset management firm is admittedly difficult to measure objectively, it is critically important for a client to attempt to establish criteria for measuring the manager's performance. As best I can tell, however, there have been no established criteria for measuring FADA's performance. In particular, there appears to be no attempt to take into consideration the holding costs for assets and the time value of money. As a result, millions of dollars may be lost for the FSLIC because assets are being held to achieve higher later values which actually represent a lower net present value recovery.

FEE STRUCTURE

Although I am not privy to the details of FADA's fee structure, it is my impression that the cost to the FSLIC of FADA's services has been far greater than the cost would be through the use of private firms. In theory, FADA's ability to pass through subcontractor fees seemed to have been designed to give it an incentive to sub-contract as much work as possible, with the understanding that any excess fees would inure to the benefit of the FSLIC. In practice, however, any "profit" earned by FADA will not be returned to the FSLIC, but simply will go into building a greater infra-structure for FADA.

Finally, FADA staff has admitted to us an inherent bias against the selection of firms that have previously done substantial work for the FSLIC. According to FADA staff, "FADA was set up to do things 'better' than the FSLIC and it would be difficult for us to explain the use of the same contractors which FSLIC has used." In this way, FADA has ruled out several experienced and talented firms solely for political reasons.

I still believe that FADA can be an effective tool for the FSLIC in several key areas. In that light, I would like to make the following suggestions:

1. FADA's role should be defined as exclusively supervisory. FADA's goals, responsibilities, and reporting should be clearly defined to support the FSLIC's needs and objectives. FADA should not directly engage in the management of assets, the development of business plans for specific assets, the negotiation of individual workouts, or the disposition of individual assets. FADA should be responsible for supervising pri-

vate contractors and for developing global disposition strategy for troubled assets. FADA should give direction to evaluate the performance of the contractors. It should not attempt to do work that could otherwise be done effectively and competitively by private contractors.

2. Contractor selection procedures.

(a) FADA should announce clear guidelines for the selection of contractors which should be followed in all but exceptional cases. These procedures should include written Request for Proposals sent to all qualified firms. The contractor questionnaires should be used and updated frequently for this purpose. The selection of a contractor should be based upon predetermined criteria which are as objective as possible. Contractors should not be selected solely on the basis of price or their ability to "lobby" local FADA officials. Rather, qualitative factors should be given strong consideration. Contracting personnel should be required to justify in writing the selection of all contractors. Favoritism should not be tolerated.

(b) FADA should adopt a portfolio approach to asset management where possible. Contractors should be required to demonstrate specific expertise to handle assigned assets. A contractor which can demonstrate in-house expertise over a broad range of assets should be preferred to a contractor which only has limited, narrow expertise. The reason for this is the savings in administrative overhead and supervision by FADA personnel.

(c) Contractors should be required to demonstrate experience and expertise in dealing with troubled real estate assets. Experience with *troubled* real estate, rather than general real estate skills, should be given strong consideration.

3. Specific, detailed performance criteria should be established for FADA and should be reviewed on a regular basis. In particular, the cost of holding assets should be taken into consideration quantitatively in evaluating FADA's performance. FADA should not be encouraged to speculate on the turn around in local economies without well-defined market research justifying such a recovery, and then only for a reasonable period of time.

I hope the above will be helpful to you in confronting the task ahead. With new leadership and perspective you have brought to the Federal Home Loan Bank Board and the FSLIC, we are confident that the Board will clarify FADA's role regarding the use of private contractors in a manner which will allow us all to work more effectively. Please let me know if the * * * can be of further assistance to you in this process.

Very truly yours,

———— ————.

———

ATTACHMENT 1.3

FEDERAL ASSET DISPOSITION ASSOCIATION—MEETING OF THE BOARD OF DIRECTORS, AUGUST 6, 1986

MINUTES

Meeting: A meeting of the Board of Directors of the Federal Asset Disposition Association ("FADA" or the "Association") was convened at the Marriott Hotel (D/FW), Dallas, Texas at 8:00 a.m., CDST, on August 6, 1986.

Attendance by Directors: The following Directors were present: W.F. McKenna, Chairman; Edwin R. Biron; Emmet J. Cashin, Jr.; Gerald J. Levy; Roslyn B. Payne, ex-officio; John B. Zellars; B.R. Beeksma; Leo Blaber, ex-officio; Thurman C. Connell, ex-officio; W.W. McAllister, III; Gene E. Rice; Donald B. Shackelford.

(Mr. Connell replaced Mr. Angelo Vigna as an ex-officio Director in the position reserved for the Director or Acting Director of the FSLIC.)

Attendance by others: The following other person was present: Robert J. Axley, Senior Vice President-General Counsel & Secretary, FADA.

General session: The Chairman called the meeting to order at 8:00 a.m., CDST.

Approval of prior meeting minutes: Upon motion duly made and seconded, the minutes of the meeting of the Board of Directors of the Association of May 1, 1986 were unanimously approved.

President's report: Roslyn Payne reported to the Board on the status of the FADA contract with the FSLIC as receiver for Sun Savings and Loan Association, San Diego, California. In addition, Ms. Payne reported on the status of contracts between FADA and, respectively, Sunrise Savings and Loan Association, Boynton Beach, Florida, Presidio Savings and Loan Association, Porterville, California, and FSB, Inc. (a wholly owned subsidiary of Farmers Savings Bank, Davis, California). All three of the later contracts are with association participating in the Management Consignment Program of the Federal Home Loan Bank Board ("FHLBB").

In addition, Ms. Payne reported that FADA had become involved at the request of the FSLIC in several short term projects involving specific advice on particular real estate asset matters. In addition, FADA had become involved at the request of the Chairman of the FHLBB in the due diligence process prior to the failure of an institution. Mr. Connell stated that the Chairman wanted FADA involved to save money for the FSLIC and to make the selection of outside contractors more efficient. In addition, Mr. Connell stated that having FADA involved in the due diligence process is a valuable double check agianst the conclusions reached by the FSLIC.

In response to questions raised by several members of the Board, Mr. Connell described the process by which assets of a failed institution are segregated between the "good bank" and the "bad bank". Once assets are assigned to the good bank, it becomes very difficult to reassign them to the bad bank. In some cases, it has required the involvement of the FSLIC in its corporate capacity to effect such a transfer. Mr. Connell stated that FADA would be very valuable in the future in assisting the FSLIC in making that asset segregation.

Frequency of board meetings: The Chairman led a broad and detailed discussion of the advantages and disadvantages of Board meetings being held on a monthly, bimonthly or quarterly basis; and the advantages and disadvantages of the various committees of the Board being very active and very involved in the business of the Association.

Ms. Payne reported that she had found all members of the Board to be most cooperative and to have provided her with complete access to them. She cited several examples of Board members being actively involved in assisting the Association in finding and screening key personnel (using recent examples of assistance provided by Mr. Beeksma and Mr. Zellars). She also stated that she appreciated the active involvement of the Board in assisting in the negotiation and resolution of issues involved in the form asset management agreement.

The Chairman suggested that because of the crisis situation currently existing in the savings and loan industry, and the magnitude of the task facing the Association, it would be prudent to conduct board meetings every two months. After a general discussion by the Board, it was suggested by Mr. Shackelford that the Association adopt a policy of board meetings being conducted on a quarterly basis and that for the first year of operations there would be two additional "special meetings" conducted to address the additional issues during the start-up period of the Association. The Chairman announced that the next regularly scheduled quarterly meeting of the Board of Directors of the Association would be conducted in the offices of the Association beginning at 3:00 p.m. on November 7, 1986 and continuing on November 8, 1986. In addition to that regularly scheduled quarterly meeting, it was the consensus of the Board that a special meeting was needed to discuss operational issues, which special meeting was set for October 6th and 7th, 1986, to be conducted in Chicago.

Coordination with FSLIC: Mr. Beeksma inquired as to the current level of cooperation being given FADA by the staff of the FSLIC. In response, Ms. Payne stated that the level of cooperation was generally outstanding as it related to the FSLIC regional offices, and that the level of cooperation with the FSLIC staff in Washington was excellent with few exceptions. She stated that there had been some past problems with certain personnel in the Operations and Liquidations division, but that Mr. Connell had been most helpful in assisting in the resolution of those problems and she was cautiously optimistic that there would be a minimum of problems in the future. Mr. Connell stated that the staff had approached the relationship with FADA on the basis that the FSLIC has with all other contractors in the system and that it had taken the Chairman to correct that incorrect approach. Mr. Connell stated that he was optimistic that since the Chairman had made it clear how he wished FADA to be utilized, the problems with the staff would be minimized. Ms. Payne stated that the problems with the staff had been the reason the form asset management agreement with FSLIC had taken in excess of 90 days to negotiate rather than the original estimate of 60 days. She stated that while there may still be problems at the staff level, she was prepared to work with those problems for the time being and see if they could be resolved without the involvement of the FADA Board. The Chairman stated that the impasse in obtaining an asset management agreement in a form acceptable to FADA had to be effectively broken. He stated that once the problem was described to the Chairman, chief of staff, and Mr. Connell as Acting Director of FSLIC, each of them had given FADA consistent and effective support.

Since the asset management contracts had been completed, it was important that FADA rapidly act on the many problem assets of the FSLIC.

FADA membership in Federal Home Loan Bank of Topeka: Mr. Axley reported to the Board that the membership documents of the FADA in the Federal Home Loan Bank of Topeka had been completed and that the fifty million dollar ($50,000,000) line of credit for the Association had been established and guaranteed by the FSLIC. In response to questions raised by Mr. Rice, Mr. Biron stated that the Investments and Operations Committee was studying the uses to be made of the Association's twenty-five

million dollar ($25,000,000) in capital as compared to the uses to be made of the $50,000,000 line of credit. Generally, it was the Investment and Operations Committee's thought that the capital of the Association needed to be preserved for balance sheet integrity and the $50,000,000 line of credit was available to pay contractors costs which would be reimbursed by the receivers.

ATTACHMENT 2.1

MEMORANDUM

To: ——.
From: ——.
Date: March 3, 1987.
Subject: FADA Performance Issues.

I am greatly concerned about FADA performance concerning reporting requirements for financial information and management analysis necessary to support the Bank Board and FSLIC senior management. When informed of FSLIC informational needs and approval procedures, FADA has refused to comply, stating they do not need to conform to our control systems. In addition their managers are not conforming to our policies and procedures for business plans and asset valuation. As you are aware, we felt it mandatory that a consistent methodology be implemented for asset valuation and disposal strategies to establish performance yardsticks for all asset managers, in addition to creating an ability to provide, compare and analyze asset related information for legal, fiduciary and Congressional issues.

Many of the Regional Directors have expressed concern to me that the business plans due from FADA are severely delinquent, not in compliance with Circular 86-1, policies and procedures for asset valuation, or of such poor quality as to be unusable. The Regional Directors have sent samples of those plans to me for my review, and I have also found them to be unacceptable. There have been numerous instances of non-compliance with 86-1, a lack of supporting detail for the recommended strategy, a lack of support for alternative disposition strategies, and many instances of inconsistencies between the detail of the plan and the summary information. In addition, critical management information is often missing from the plan, although readily available in the asset file provided to FADA.

I also have a concern that FADA, although they are purported to be industry experts in asset management, are not doing the work themselves. Instead, they have hired many layers of subcontractors to perform the management of the asset (e.g. property managers, asset managers, marketing managers etc.) If the only help we needed was from contractors, I submit that it could have been done more cost effectively if we had hired the contractors and performed the oversight ourselves. At the present time, it is costing several receiverships $400-500k per month EACH, for FADA fees, and they have seen no plans. That is a significant amount of money to pay when the work product is not forthcoming. In Sunrise, I gave an NRV seminar to FADA subcontractors at FADA's request. There were approximately 70-100 subcontractors present who had been hired to prepare FINAL business plans for submission to Millard Hall in ten days, but these same contractors had not even been provided the names of the assets they were to manage, much less the files on those assets. I seriously question the quality of business plans that will be created in 10 days with little or no information at the start of that short time period.

My recommendation is that FADA be given time and training to get their arms around the assets they are already managing prior to assigning them any more of our portfolio. In this way, we can be assured of the control and compliance necessary to perform our fiduciary responsibilities, while providing management information to the Board. The FSLIC/OLD personnel involved with business plans and asset valuation stand ready to assist FADA personnel in the steep learning curve they are experiencing.

ATTACHMENT 2.2

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER FOR SUNRISE SAVINGS AND LOAN ASSOCIATION,

DECEMBER 22, 1986.

Memorandum To: ——.
From: ——.
Subject: Federal Asset Disposition Association Evaluation of Services.

As requested, this memorandum is provided in an effort to summarize the FADA's performance to date and to address problem areas which have been experienced. I would like to preface this memorandum by bringing to your attention the actions the Receiver has taken to assist the FADA in performing their duties. Specifically, the FADA was permitted to offer employment to all loan officers of the association without any competitive offers from the Receiver. As a result, the Receiver employs no loan officers of the former association as these individuals are the primary staff of the local FADA office. Additionally, we have provided FADA office space in Houston, furniture for their Florida office, installed a Kodak copier at their request and provided two employees full time to market real estate which they are assigned. Further, the Receiver agreed to a deviation from the Asset Management Agreement by performing property management services on FADA assets for a 120 day period since they were not equipped or staffed to perform this duty as called for in the agreement. They have already requested an extension of this period on some assets and we anticipate other requests; to which the Receiver will have no alternative but to agree or sustain significant financial loss. In summation, the Receiver has assisted the FADA as much as possible in the performance of their duties since their performance has a direct impact on the recovery of the Receivership, and ultimately the insurance fund.

In spite of our efforts, however; the FADA's performance has been less than satisfactory. Our dissatisfaction stems primarily from the lack of management of the assets which they are being paid to manage and the resultant use of the Receiver's resources to take action once the FADA has failed to do so; and secondarily from their failure to provide adequate facts to support their recommendations once they are made. Additional problems exist with FADA's management of the assets and will be discussed after the following summaries of some specific assets assigned to the FADA.

I previously indicated that problems exist with the substance of FADA's recommendations. Often there is insufficient information provided to properly analyze the recommendation and, therefore; to approve the requested action. Attached is a copy of a December 1, 1986 letter (received December 19, 1986) from Faye Haack requesting authority to foreclose on several assets. The following observations are offered:

The value of some properties is unknown. No bid amount is recommended.

Whether there is any equity in the second mortgages is unknown.

Whether funds will have to be advanced at the sale is unknown.

The failure to consider the answers to these questions prior to recommending foreclosure would suggest that problems with the most basic of fundamentals exists.

The foregoing incidents are considered representative of the FADA's asset management efforts to date. Since a review of each of the assets the FADA is managing is neither feasible nor appropriate within this memo, I will address other aspects of the relationship.

BUSINESS PLANS

One asset was assigned to the FADA on September 12, 1986 and the majority of the assets assigned effective October 15, 1986. According to the terms of the Asset Management Agreement, preliminary business plans are to be submitted to the Receiver within 30 days of assignment with business plans to be provided within 90 days. As of this writing, no business plans have been received—preliminary or otherwise. I will acknowledge that this provision of the Agreement may be unrealistic, however; the Receiver has submitted and had approved approximately 80 preliminary business plans and 2 business plans. It should be noted that the receiver's responsibilities extend far beyond merely managing a portfolio of assets, while that is the FADA's sole function.

INSURANCE

As you are aware, we have been successful in obtaining a blanket peril policy on the assets of the Receivership which will result in both monetary savings and better coverage than previously existed. The FADA was involved from the outset in the discussions of the coverage and the negotiations with the agent of record—Corron & Black. However, at the last minute (as detailed in a previous memorandum) the FADA would not concur in the binding of the coverage. Since the Receiver would be paying the premium and any losses sustained would only impact the Receiver, coverage was bound without FADA's endorsement. Failure to bind coverage by the deadline would have resulted in significant financial loss to the Receivership which was not warranted due to FADA's indecision. The new coverage entails providing information to the carriers on the assets they are insuring. This is accomplished by the completion of information sheets on each asset covered and the assimilation of a consolidated report therefrom. The Receiver assumed the responsibility of preparing the report on both FADA and Receiver assets, however; difficulty has been encountered as a result of FADA's failure to properly complete the information sheets. As a result, we are now correcting the information sheets on the assets assigned to FADA to ensure continued coverage.

TAXES

The Receiver has been paying taxes on FADA assets and will continue to do so until they have assumed their property management responsibilities. Whether this is a function of "property management" or not is questionable, however; the problem experienced in this area was whether or not the taxes should be paid. Initially, the FADA did not want to pay property taxes during the discount period. Only after explaining the financial prudence of paying the taxes

during this period would they agree on same.

FILES

FADA employees visit our offices regularly to review files which have already been copied for the FADA. This does not present a problem, however; it should be noted that the local FADA employees review our files since the files the FADA had constructed were sent to Atlanta and the local asset managers have little to work from other than memory.

FEES AND EXPENSES

Naturally, the FADA has promptly billed the Receiver for the management fees called for in the Asset Management Agreement, whether services called for in the Agreement have been rendered or not. Ignoring the obvious problems I have with paying someone else for work which we are performing, the FADA has submitted bills which are not adequately supported and do not contain sufficient information for us to determine what we were paying for. The initial management fee bill submitted by the FADA did not contain loan numbers or asset names by which we could identify what was being paid for. Only after additional information was requested could we identify what fees were being charged.

CONTRACTING WITH THIRD PARTIES

Attached is a copy of a December 19, 1986 memorandum from the FADA Houston Office in which they indicate they have selected management companies for various properties and they will be needing files. Although the FADA has had the opportunity to construct all files necessary for the past three months, they are now directing Receiver employees to supervise the file construction. As stated in the memo, they are having the third party contractors they employ contact the Receiver directly to provide them information on the properties. This is not the first such occurance. If the Receiver is to deal directly with the contractors, why do we need the FADA? Certainly not because of the vast manpower they have available or the wealth of experience they offer. The FADA is being paid to manage assets on a cost-plus basis and is merely contracting out the function for which the Receiver bears the cost and the FADA lives on the plus. The original concept of the FADA was a good one, however; reality bears little resemblance to the original idea.

Although additional topics could be addressed and additional examples cited, I do not think they are necessary to ensure that a clear picture of the relationship between the Sunrise Receivership and the FADA is presented. I would like to point out that the FADA has been very cooperative from the beginning and that I feel they are putting forth their best effort. Unfortunately, these efforts leave a lot to be desired. We will continue working with the FADA to ensure that the Receivership's best interests are protected.

Should you require any thing further, please advise.

ATTACHMENT 2.3

FEDERAL SAVINGS & LOAN INSURANCE CORPORATION, RECEIVER FOR FIRSTSOUTH F.A.

MEMORANDUM

To: ——.
From: ——.
Date: October 1, 1987.
Subejct: FADA contract/FirstSouth.

The FirstSouth contract with FADA was executed December 6, 1986, for a term of one year. Article XII provides for termination upon 45 days written notice for any reason. (12.1 (a) pg. 23). My reasons for suggesting termination are the following:

A. Operating statements from third party property managers of FADA assigned assets are not being furnished.

B. Taxes are not being timely paid. Penalties to date are $192,822. (See attached Exhibit 1 & 2)

C. Appraisal costs are excessive. (See attached Exhibit 3)

D. We are being charged for July alone over $235,000 for asset management and consulting fees (over and and above the FADA management fee). Upon investigation, it turns out that these charges are not really for asset management or consulting, but are for due diligence (file reviews) performed by subcontractors. For example, if there are three loans on one project, we are billed for three file reviews; (Exhibit 4) in the case of Chasewood three file reviews for one project totaled over $5K; the Excelsior Hotel has three file reviews for one project (on which we have only $3M second mortgage) at a cost in excess of $20K. For August, Lorraine Guardian is one project with three file reviews costing in excess of $11K (Exhibit 3).

E. For one project with two or three loans or files, we are receiving and being billed for two and three separate business plans. Examples: Curlew Landings has three business plans costing $5243.; Independence Square Shopping Center, one project with two business plans. More to come I'm sure.

F. Title reports represent the same multiplication of costs. We have thirty two Freeway Medical Clinic loans—held by two separate corporations. These are condominium medical offices. Twenty-six separate title reports were ordered at a cost in excess of $9K, where the Receiver had a quote for $1200 from Pulaski Title for all of them, and FADA was informed of this.

G. Real Estate Tax Service (RETS) has been engaged by FADA for handling tax appeals at a cost in excess of $50K for 150 FirstSouth properties. Of these 150, only 66 represent taxable properties. (Exhibit 5)

This litany could go on, but I stop to save boring the reader as well as the additional time and expense of FADA Watching, including the writing of this memorandum.

The above represents a failure of good business judgment in understanding the value of services purchased. While I understand that a model FADA contract is being drafted at this very moment, the words of a contract cannot prevent the ills of which I complain. Nevertheless, if such an agreement is in the making, I suggest that you send someone to talk with Receiver personnel at FirstSouth, as I believe our input into the document would be valuable.

If the subject contract is terminated, Receivership personnel is fully capable of taking over the FADA assigned assets. I would welcome the opportunity to detail the projected cost savings. A serious alternative is to renew the contract, reassign all the assets to the Receivership, continue paying FADA its' management fee and we would still save money.

FEDERAL SAVINGS & LOAN INSURANCE CORPORATION, RECEIVER FOR FIRSTSOUTH F.A.

MEMORANDUM

To: ——.
From: ——.
Date: September 22, 1987.
Subject: FADA tax Delinquencies.

Attached is a list of assets showing the delinquent amounts incurred on properties managed by FADA.

As you will note, many of these would have been burdened with even additional penalties were it not for our persistence in making sure that payments were disbursed timely.

Further, you will notice the amount of time we spend in monitoring these assets and communicating with taxing authorities on FADA's behalf.

If you should have any questions concerning this list, please give me a call.

ATTACHMENT 3.1

FEDERAL ASSET DISPOSITION ASSOCIATION—PROPERTY SUMMARY

INTRODUCTION

This Federal Asset Disposition Association (FADA) Property Summary ("Summary") is a concise and informative presentation of certain properties that are currently available for sale. The properties are owned either (i) by the Federal Savings and Loan Insurance Corporation ("FSLIC") acting in the capacity of receiver for a failed savings and loan institution, (ii) by FSLIC in its corporate capacity, or (iii) by a group of financial institutions ("Participants"), including in some cases interests owned by FSLIC. FADA assists FSLIC and Participants in managing and marketing these properties. The ownership interest in these properties has generally been obtained by foreclosure or by agreements with a former borrower that has relinquished title as part of a troubled debt settlement.

HOW TO USE THIS SUMMARY

FADA has developed a marketing system for the properties that will work efficiently and effectively for both Buyer and Seller.[1] The steps you should take to utilize this Summary efficiently are as follows:

Carefully review the properties set forth in this Summary. We have provided information on each property, such as property name, type, approximate location and size and, if appropriate, a brief description of the level of improvements and the approximate occupancy levels.

We have included a simplified road map to help you locate each property.

We encourage you to conduct a drive-by inspection of the property and its improvements.

Once you've determined the properties in which you have a continuing interest, and have viewed those properties, complete the detachable property marketing package request form on the back of this Summary and mail it to us. We will respond in the following manner.

Promptly upon receipt of your request, the appropriate FADA regional office staff or contract marketing agent will receive the details of your request for each property.

Within approximately ten business days of the receipt of your request, one or more

[1] "Seller" means either FSLIC as Receiver for a failed savings and loan, FSLIC in its corporate capacity, or the Participants.

of the following will be sent to you for each property in which you've indicated an interest:

(a) A detailed property market package describing the property including instructions for submitting offers to purchase, appropriate contact names and telephone numbers.

(b) A letter confirming receipt of your request and stating that active marketing of the property is yet to commence and the anticipated date on which a property marketing package will be sent to you.

(c) An update on the status of the property if it has recently come under a contract of sale, if a sales transaction has closed, or if the property has been withdrawn from active marketing for some other reason.

In addition, the information you've provided in your request will be tracked in our data base for potential future property information.

Although we will attempt to respond appropriately to each request in a timely manner, we do not assume liability for failing to do so.

BROKERS

Offers to purchase properties should be net of Buyer's broker's compensation. Buyers who desire to retain brokers to represent them may do so.

FADA and/or the Seller may from time to time retain agents to market certain properties. In such cases, FADA and/or the Seller shall pay the compensation of such agents pursuant to a separate written agreement. FADA and the Seller shall have no liability with respect to any compensation arrangement entered into by such agents and the Buyers' broker, if any, and the Buyer's broker shall look solely to such agents and/or to the Buyer for compensation.

In all cases FADA and the Seller reserve the right to require written evidence of authority prior to dealing with brokers and will require a written agreement providing that any broker (other than an agent engaged directly by FADA and/or the Seller pursuant to separate written agreement) is not the agent of FADA and/or the Seller, that the Buyer and/or such agents will be solely responsible for the brokers' compensation, and that the broker will look solely to such agents and/or to the Buyer for any compensation. No real estate listing or agency relationship with FADA and/or the Seller is implied directly or indirectly by reason of this Summary or by providing information to or entertaining discussions with brokers.

CONDITION OF PROPERTIES

Interested Buyers should be aware that the Seller may have acquired the properties by foreclosure or deed in lieu of foreclosure, and that the Seller is selling the property in "as is" condition with all faults, without representations or warranties of any kind or nature. Prior to and/or after contracting to purchase, as appropriate, Buyers will be given a reasonable opportunity to inspect and investigate the property and all improvements thereon, either independently or through agents of Buyer's choosing. Buyers shall not be entitled to, and should not, rely on the Seller, FSLIC, FADA, or their agents as to (i) the quality, nature, adequacy and physical condition of the property including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances, (ii) the quality, nature, adequacy, and physical condition of soils and geology and the existence of ground water, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the property, (iv) the development potential of the property, its habitability, merchantability, or fitness, suitability or adequacy of the property for any particular purpose, (v) the zoning or other legal status of the property, (vi) the property's or its operations' compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the quality of any labor and materials, and (viii) except as expressly provided otherwise in an executed contract of sale, the condition of title and the nature, status and extent of any right of way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction, and any other matter affecting title. Although Seller's predecessors may have performed work, or contracted for work performed by third parties, in connection with the property, Seller, FSLIC, FADA, and their agents shall not be responsible to Buyer or any successor on account of any errors or omissions or construction defects of such predecessors and third parties.

GENERAL

The Seller is soliciting offers to purchase the properties included in this Summary. This Summary does not constitute an offer to sell, and the Seller reserves the right to withdraw any property at any time without notice, to reject all offers, and to accept any offer without regard to the relative price and terms of any other offer. Any offer to buy must be (i) incorporated in a formal written contract of purchase and sale to be prepared by or on behalf of the Seller and executed by both parties, and (ii) in certain situations, approved by FSLIC and/or Participants. Neither the prospective Buyer nor Seller shall be bound until execution of the contract of purchase and sale, which contract shall supersede prior discussions and constitute the sole agreement of the parties. Prospective Buyers shall be responsible for their own costs and expenses of investigating the property.

The information contained herein was obtained from a variety of sources, including the files of a failed savings and loan. Users of this information should consider the circumstances under which the ownership of the property has been obtained and determine their level of reliance on the information provided.

Seller, FSLIC, FADA, and their agents make no representations as to the accuracy or completeness of such information and it is not guaranteed. The information contained in this Summary is subject to change, errors, omissions, change of price and change of conditions and is not intended to be comprehensive. Statements contained in this Summary which involve matters of opinion, whether or not identified as opinion, are intended to be that only and not representations of fact. This Summary has been prepared for the exclusive use of FADA and persons and entities to whom FADA makes it available. It is and remains the property of FADA, and any reproduction of the whole or of any portion without the written consent of FADA is prohibited. This Summary and all copies shall be returned to FADA upon demand.

CALIFORNIA

Fresno: Property No. 1, Sierra Plaza Shopping Center, 6410 North Blackstone; approximate size, 83,900 s.f.; price, $7,750,000.

Property description: This shopping center includes approximately 83,900 square feet of net rentable space situated on an approximate 6.22 acre site. Current occupancy approximates 85%. Proforma net operating income is approximately $716,000.

FLORIDA

West Palm Beach: Property No. 2, Abbey Park—Phase I, South side of Forest Hill Blvd; approximate size, 16.67 acres; price $1,220,000.

Property description: Vacant land which has a master site plan to build 54 units in one story duplexes and 104 units in two story eight-plexes.

West Palm Beach: Property No. 3, Abbey Park Plaza, 1892 Abbey Road; approximate size, 14,250 s.f.; price $1,100,000.

Property description: This strip shopping center consists of two single story buildings which are situated on approximately 1.55 acres. It is approximately 35% occupied and is anticipated to generate net operating income of approximately $104,440.

Greenacres: Property No. 4, Haverhill Park Apartments, 3750-3785 Mil Race Court; approximate size, 30 units; price, TBA.[2]

Property description: The property includes 15 one story buildings. Seventeen units are approximately 960 square feet each and contain two bedrooms and two bathrooms. Thirteen units are approximately 1,090 square feet each and have three bedrooms and two bathrooms. The property is approximately 74% occupied with seven vacant units requiring refurbishment and leasing.

ATTACHMENT 3.2

FEDERAL ASSET DISPOSITION ASSOCIATION

(Excerpts from Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the Committee on Banking, Finance and Urban Affairs, House of Representatives, October 15, 1987)

Chairman ST GERMAIN. The Bank Board sent FSLIC materials to FADA after an inquiry of Carl Hoyle to provide materials to us. Is that correct?

Mr. WALL. Some documents, I understand, were sent to the regional office in Atlanta for comment.

Chairman ST GERMAIN. Documents went to FADA, rather than coming to us. Had to go to FADA first. That is not direct communication, and that was under the control of Mr. Hoyle and I hope in the future he will be a little more responsive directly to my staff and to my Members.

Have you concluded, Mr. Kanjorski?

Mr. KANJORSKI. Yes.

Chairman ST GERMAIN. I am going to take a little time here to set a little scenario. I want to make it very clear I have never in my life spoken to Mr. Juliano until he came up here a few moments ago in the presence of everybody in this room. He put his hand out—I did not shake his hand. He introduced himself and said he would like to speak to me. I said this is not the proper time. I have never spoken with the man, never met him before in my life. I am going

[2] Price will be indicated in the Property Marketing Package.

to review a scenario here I find extremely troublesome.

I don't think the Home Loan Bank Board, FSLIC or FADA should create a police state, and, frankly, my concluson is that this man was treated as though we are in a police state. Mr. Juliano, for instance, complained along the way that he had obtained an appointment with John Hatfield during late March. He first started the process in February 1987.

In late March he complained that he had this appointment with Mr. Hatfield. Unfortunately, FADA's professional discourtesy resulted in Mr. Juliano and his colleague having to sit in Mr. Hatfield's reception area for 3 hours before they could see him.

Chairman Wall, I assure you you will never wait 3 hours to see me; no one ever has when they had an appointment, whether they be the least important, so to speak, constituent, because they are all important to me, including the poorest constituent with a problem. I would never ever keep anyone waiting 3 hours.

So here is a little mind set. We have got a developer here. Let him wait and let him cool his heels. What would your reaction be? You would be upset, wouldn't you? So would I. So would I.

Then I look at the correspondence, March 2, 1987, letter from Mr. William Juliano to Mr. Tim Solomon, asset manager in FADA's Atlanta office re: Mr. Juliano's interest in submitting a bid on the Mutiny Hotel when the property becomes available.

April 7, meeting in FADA's Atlanta office between Mr. Hatfield and Mr. Juliano and two of Mr. Juliano's colleagues. April 7, that is the 3 hours sit down and cool your heels for 3 hours.

April 28, meeting between FADA's Ms. Payne and Mr. Axley and Mr. Juliano in FADA's DC offices. April 28, note from Mr. Juliano to Ms. Payne in which he offers his sincere thanks for taking the time to meet with him. He also asks her to understand that it was never his intention to hurt her or FADA. He only wanted to right a wrong.

May 1, 1987, letter from Mr. Axley to Mr. Juliano in which he expressed FADA's concern about his stated intention to bring a lawsuit based on conflict of interest charges and would like the opportunity to respond directly to him on any special situations which he believed existed.

May 11, letter from Mr. James L. Quarles, III of the law firm, Hale and Dorr, Mr. Juliano's counsel to Mr. Axley re: Mr. Juliano's two concerns: 1) of treatment accorded him by various FADA personnel, and 2) his interest in purchasing assets. Mr. Quarles reiterated Mr. Juliano's request for: specific, enforceable assurances that FADA will provide him with information.

May 12, letter from Mr. Axley to Mr. Juliano in which he expressed: FADA's willingness to assist Mr. Juliano on his inquiries concerning the Mutiny Hotel. June 5, letter from Mr. Plumley to Mr. Juliano in which he expressed: that if FADA markets the Mutiny Hotel and Boynton Trails shopping center individually, FADA will follow-up with appropriate materials to assist him in evaluating and so forth.

June 19, Mr. Juliano's announcement of the law suit against FADA appears in the "Wall Street Journal." June 25, letter from Mr. Juliano to Ms. Payne informing her of his remaining alternative which includes pursuing litigation against FADA. All very proper. He is being forthright as far as I can see. He is saying I am not getting any cooperation. I may be sitting on my heels. I am being thrown from pillar to post. I may well have to bring a suit.

June 26, Mr. Juliano's announcement of the law suit against FADA appears in the "Wall Street Journal." July 28, letter from Michael Madigan—listen to this one, of the firm, Akin, Gump, Strauss, Bob Strauss, Houer and Feld to Mr. Juliano—now this is the big high-powered law firm in Washington writing saying, "Offer set forth by Akin, Gump in July 16 letter to Mr. Juliano and introducing Akin, Gump as FADA's counsel."

Mr. Madigan informed Mr. Juliano—should he file litigation against FADA—you got to be careful because Akin, Gump will represent FADA. That is heavy stuff.

July 31—Mr. Juliano should start quaking in his boots. July 31 letter from Mr. Juliano to Mr. Madigan in which he outlines exactly what he requested. He also requested a meeting with Danny Wall, Bank Board Chairman, as to a proposal for a FADA ombudsman.

August 3, letter from Mr. Quarles of Hale and Dorr informing Mr. Madigan of Akin, Gump that it no longer represents Mr. Juliano. August 27, letter from Mr. Madigan to Mr. Juliano based upon the discussions, Akin, Gump concluded that Mr. Juliano requested the following documents of FADA: 1) information typically provided to a purchaser of real property with respect to the Mutiny Hotel, the Boynton West Trails Shopping Center, and 10 other shopping centers in the Southeast under FADA's management (the nature of the information and the identity of the shopping centers have not been specified to FADA), 2) a legally enforceable option to purchase the Mutiny Hotel, on such specific terms.

Mr. Madigan closed with a final request of Mr. Juliano: to specify any future requests of FADA in writing.

August 26, 1987, letter from Mr. Juliano to Mr. Madigan, in his response to Madigan's letter of August 20. Mr. Juliano mentioned in this letter his frustrating 3 hour wait in FADA's office, only to get no information other than that the properties were already spoken for.

Now, we go to the fact that Mr. Juliano informed the committee and most recently the "Washington Post,"—this is a summary from my staff, that—you do have a copy of that in front of you, the last paragraph, that during the period of events with FADA he was harassed by private investigators—oh, he doesn't have it yet? Chairman Wall, I am reading from the summary of Mr. William Juliano's case.

Do you see the "Washington Post" underlined? During this period of events with FADA he has been harassed by private investigators. Also reported to us was that New Jersey police discovered that someone had broken into Mr. Juliano's office during an August night in an apparent attempt to remove surveillance equipment which had been placed in the ceiling. Police are still investigating the incident.

Our investigation has revealed that the services of a private investigative New Jersey firm whose services were contracted by a Virginia company, in turn, had its services engaged by FADA's law firm.

A call to New Jersey by our staff verified what they had been told by Mr. Juliano. FADA retained Akin, Gump; Akin, Gump retained the Fairfax Group; the Fairfax Group hired Acumen and Acumen investigated Juliano in the State of New Jersey.

Now, I could be wrong, Chairman Wall, but when I look at this scenario and this chronology of events, it seems to me that Mr. Juliano is a potential buyer/developer looking to buy some of the assets under FADA's control. Isn't that what it sounds like to you?

Mr. WALL. Yes.

Chairman ST GERMAIN. Correct. There is nothing that has come to our attention where Akin, Gump, Strauss, contend that Mr. Juliano is an evil man, that he is a nefarious individual. Now, here is what bothers me.

Somebody—John Doe—attempts to buy his assets from FADA. They waltz him around for a long period of time. He gets frustrated. His name is Juliano. My name is St Germain. We have that hot blood now, and at times we get a little upset. As I say, I don't know the man, but he got upset. He said, "I am going to sue." Anybody would say I am going to sue. That is nothing new. It is ordinary.

However, this law firm then proceeds to hire investigators. We don't have the—by the way, let me ask you this, Chairman Wall. The thought just occurred to me. FADA retained Akin, Gump; Akin, Gump and Strauss retained the detective agency, Fairfax Group that retained Acumen. The bills were paid for by FADA, correct?

Mr. WALL. Yes.

Chairman ST GERMAIN. I am sure, meaning that FADA got a report. Can the committee be provided with the report that FADA received from the investigative agencies that investigated Mr. Juliano and what the directions were to those investigators as to what they should investigate of Mr. Juliano and what reason they had for feeling they should investigate a privacy citizen attempting to do business with a government—I still think it is a government entity.

This is FADA? I would like to see the inquiries and the reasoning behind this, because to say it is ordinary course of procedure for a law firm to investigate something, you do that perhaps if you got cause or reason to believe that you are dealing with somebody who is terribly dishonest, who has done some very evil things, has a bad background, what have you. But I don't think that you put an investigation on everybody who wants to buy assets from FADA, do you?

Do you think that should be the case?

Mr. WALL. Not in the characterization you made, no, not at all.

Chairman ST GERMAIN. I, for the life of me, cannot understand why this man, why they felt they should proceed to investigate this gentleman, so I think it is important that FADA answer up and come to the forefront and tell us why. I am asking you now to direct them to cooperate with this committee and its staff to determine why this type of tactic—I think it is most, most unusual and very much out of line.

Mr. KANJORSKI. Mr. Chairman, would you yield for 1 minute?

Chairman ST GERMAIN. Sure.

Mr. KANJORSKI. May I request we request the chairman to provide the committee with all contracts or investigations made by FADA of any individuals by detective agencies.

Chairman ST GERMAIN. That might be a good point. Let's determine if there are other people who have been investigated in this manner. If so, this is a very serious, serious situation and I think it probably reflects upon—you know I don't think a law firm will hire investigators to go out and investigate a possible litigant unless they first

receive authorization from whomever retains them.

Do you know who retained the firm of Akin, Gump, Strauss?

Mr. WALL. It is my understanding, as you indicated, FADA retained them.

Chairman ST GERMAIN. Who in FADA?

Mr. WALL. I don't know.

Chairman ST GERMAIN. Does Jim Boland know, Carl Hoyle know?

VOICE. No, Mr. Chairman.

Chairman ST GERMAIN. I would like to determine who retained these services. I think that is important, because, as I say, I doubt the law firm would hire a detective agency who then hired Acumen, a detective agency, without first consulting their client who is going to pay for the services of the detective agency.

That seems logical to me.

Mr. WALL. I don't know what the normal practices are in the practice of law.

Chairman ST GERMAIN. Mr. Kanjorski, do you have any further questions?

Mr. KANJORSKI. No.

Chairman ST GERMAIN. Chairman Wall, I am sorry that we had to indirectly keep you here in order to indirectly bring out these points, but I think it has been important——

Mr. WALL. If I might, Mr. Chairman, staff reminded me we have underway, as I indicated earlier, an inspector general in our agency conducting an investigation into this specific issue, and we will provide you with the report as we receive it.

Chairman ST GERMAIN. As I say, we are going to send you written inquiries supplementing that which were made in this hearing this morning. But I did want to say to you that you have just taken out—I am aware of the fact you were not in control of any of these, but this was one manner in which the committee would bring out the facts and some of the difficulties we have had in obtaining information, and to alert you to some of our apprehensions, our fears and our concerns.

As usual—not as usual, as usual because we met before and worked together before, a job well-done and we just look forward to continuing to work with you and, believe me, in a very, as I told you last evening when I called you, in a very cooperative manner to do that which is best and to assist you and all of your assistants in a very difficult task that you have ahead of you.

Mr. WALL. If you would permit me one comment, Mr. Chairman.

Chairman ST GERMAIN. Sure.

Mr. WALL. Perhaps on behalf of myself, as well as my fellow former staff members in the legislative branch, I would just want to wish a fond farewell to Dr. Paul Nelson, who has served this committee as long and as faithfully as he has. We all certainly will miss him.

Chairman ST GERMAIN. That is very kind and thoughtful of you. I know how it comes from the heart. Thank you.

The subcommittee stands in recess until the call of the Chair.

[Whereupon, at 1:30 p.m., the subcommittee adjourned, subject to the call of the chair.]

ATTACHMENT 3.3

SUMMARY OF MR. WILLIAM T. JULIANO'S CASE

Mr. Juliano, a New Jersey real estate developer, contacted the House Banking Committee during July of this year to inform the Committee of the treatment accorded him by various FADA personnel. According to Mr. Juliano, he made several inquiries of FADA since February 1987, requesting information on assets under FADA's management and how to bid/purchase assets, to no avail.

During March 1987, Mr. Juliano formally requested assistance, on five occasions, from FSLIC's Eastern Regional Office, Acting Director, Mr. Robert Schmid in relaying his purchase offer on the Mutiny Hotel to Mr. Tim Solomon of FADA's Atlanta office. Mr. Hatfield penned a note to Mr. Schmid that Mr. Solomon was in New Zealand at the time, but that the property was the Receivership's best asset and not really ready for market until a sales price was determined on a leased piece of property behind the hotel.

Mr. Juliano finally obtained an appointment with Mr. John Hatfield during late March. Unfortunately, FADA's professional discourtesy resulted in Mr. Juliano and his colleague having to sit in Mr. Hatfield's reception area for three hours before they could see him!

On April 21, 1987, Mr. Bob Axley informed Mr. Juliano of a meeting on April 28, 1987 with Ms. Roslyn Payne and himself to discuss Mr. Juliano's interest in FADA's operational matters and the Mutiny Hotel. After the meeting, Mr. Axley wrote to Mr. Juliano and expressed FADA's concern about Mr. Juliano's stated intention to bring a lawsuit based on conflict of interest charges and informed Mr. Juliano that FADA would like the opportunity to respond directly to him on any specific situations which Mr. Juliano believed existed.

On June 19, 1987, Mr. Juliano placed an ad in the Wall Street Journal soliciting individuals who had been discriminated against by FADA insider trading or had their rights violated to join in a class action suit. As of June 25, 1987, Mr. Juliano stated that he had not received any information regarding the properties he expressed interest in, as promised by Ms. Payne and Mr. Axley during their April 28, 1987, meeting with him.

Mr. Juliano informed the Committee and, most recently, the Washington Post that during this period of events with FADA he has been harassed by private investigators. Also reported to us was that New Jersey police discovered that someone had broken into Mr. Juliano's office during an August night in an apparent attempt to remove surveillance equipment which had been placed in the ceiling. Police are still investigating the incident.

Our investigation has revealed that the services of a private investigative New Jersey firm whose services were contracted by a Virginia company, in turn, had its services engaged by FADA's law firm.

ATTACHMENT 4.1

PEAT, MARWICK, MITCHELL & CO.,
San Franciso, CA, February 25, 1987.

Board of Directors,
The Federal Asset Disposition Association (the FADA)

Members of the Board: We have completed our first annual examination of the FADA financial statements, for the period beginning November 5, 1985 (the inception date of the FADA) and through December 31, 1986, and have issued our auditors' report thereon dated February 20, 1987. As we gained an understanding of the FADA's history to date, we learned that the FADA had only eight employees at the end of May 1986 as it embarked on a program to build an organizational infrastructure capable of providing efficient property management and disposition services in a very dynamic marketplace on behalf of troubled thrift institutions or their receivers.

Since May, 1986 the FADA has achieved significant progress, as indicated in part by (1) a functional management information system; (2) established operating policies and procedures; and (3) an increase in the number of employees to approximately two hundred as of February 1987. As can be expected in any start-up situation, particularly in a complex political and economic environment, the FADA is evolving and improving its infrastructure daily.

During the course of our examination we reviewed internal controls for the limited purpose described in Appendix II. In connection with our examination we did not identify any condition that we believe to be a material weakness in internal accounting control. A material control weakness in internal accounting control is a condition in which specific control procedures, or the degree of compliance with them, do not reduce, to a relatively low level, the risk that errors or irregularities in amounts that would be material to the financial statements being audited may occur and not be detected within a time period by employees in the normal course of performing their assigned functions. However, our study and evaluation of internal controls would not necessarily dislose all material weaknesses in the system. Accordingly, we do not express an opinion on the system of internal accounting control of the FADA taken as a whole.

Our observations regarding the current operating environment at the FADA are included in Appendix I. Where appropriate, we have presented recommendations intended to enhance the system of internal accounting control or result in other operating efficiencies. The content of Appendix I, which has been discussed with senior management, is based upon circumstances as they existed at February 20, 1987, the date of our auditor's report.

Very truly yours,
PEAT, MARWICK, MITCHELL & CO.,

APPENDIX I

1. Management information systems

The FADA is in the process of converting from a microcomputer based management information system to use of a mainframe computer. This conversion represents a natural progression from an initial startup phase, during which time the volume of activity has been relatively insignificant and such activity could be processed on software developed and adapted to the microcomputer environment, to the current phase of activity which represents increasing volume and the desirability of a larger computer to process such volume. The conversion necessitates the recoding of existing software and provides a good opportunity for adding system enhancements. We suggest that FADA consider the following:

1.1 Parallel System Testing Control Environment.—The conversion to use of a mainframe computer necessitates the recoding of the programs and much data used in the present system. In spite of the similarities in the external appearance of the two systems, the IBM mainframe system is new and must be developed using the same rigorous procedures as any development project. The FADA recognizes the importance of extensive testing to ensure that the results of data processed under the old and new system produces the same results. The control environment for such testing, to ensure the system is thoroughly tested and that

any decrepancies in results are properly addressed, is critical. Should the FADA consider it appropriate to obtain additional assurance regarding the testing environment through external consulting services, we would be pleased to assist you.

1.2 Integration of Asset Accounting and Reporting Modules.—Certain data common to both asset accounting and reporting to receivers currently requires input twice because the modules are not integrated completely. For example, changes in the value of an asset must be input into two separate programs. On occasion such changes have been recorded only once, resulting in different values for (1) computing management fees and reporting to receivers and (2) internal management reports regarding the asset values.

We understand the FADA is in the process of making programming changes in order to eliminate the dual input of data common to the asset accounting and reporting modules. During the interim period, control procedures are necessary to ensure that any common data changes requiring dual input are properly reconciled. Implementation of such procedures will enhance the reliability of asset information.

1.3 Income Producing Property Identification.—Certain properties the FADA takes under management are income producing as of the takedown date and the asset managers appear to be very aware of the characteristics of such properties. However, until a business plan for the asset is completed, which often requires several months, the management information system provides no detailed data on the property. Accordingly, a systematic basis for ensuring that asset managers are monitoring such properties on a timely basis does not exist as yet and should be established.

We recommend that the FADA consider adding a code and perhaps income data for such properties to indicate that periodic income is expected after takedown. Portfolio managers could then periodically generate reports on such properties and use the information as a basis for verifying with asset managers that receipts activity is being monitored on a timely basis until the business plans are available for the assets.

2. Accounting and reporting matters

The FADA has made considerable progress in the development of accounting and reporting policies and procedures. However, there are unresolved accounting and reporting issues which the FADA is addressing at present. Our observations and, if appropriate, recommendations regarding such issues and other accounting matters follow:

2.1 Assets Subject to Participation Agreements.—A significant portion of real estate assets placed under FADA management, including loans, involve participating financial institutions and, in many instances, the receivership which the FADA acts on behalf of is not the lead lender. Participations generally are far more complicated than other workout situations because each participation agreement is unique, decisions require the involvement of several parties, and litigation between participants is not uncommon with troubled real estate projects. Key FADA personnel have focused for some time on clarifying the FADA's management responsibilities and developing the legal framework necessary to facilitate decisions amongst participants. The accounting framework, however, has not been developed as yet.

The accounting requirements will depend on many factors, including the following: The extent of FADA's management responsibilities in situations where the receiver is not the lead lender; whether the FADA will be responsible for obtaining funding from and accounting for the interests of each participant; and whether separate legal entities are created for each asset or group of assets.

At the present time the FADA's policy is to charge a management fee on 100 percent of project net book value if the receiver is the lead lender. If the receiver is not the lead, the FADA is computing its management fee based on the receivers proportionate interest in the project. We recommend that FADA consider revising the master agreements with receivers to clarify this policy.

2.2 Reimbursable Expenditures.—FADA management agreements with receivers specify that, in addition to a management fee, FADA will be reimbursed for expenses and that all such expenses will be allocated on an asset-by-asset basis. We are informed that FADA defines expenses as any amounts it pays to third parties in connection with the assets under management. Because the FADA subcontracts to others much of the management function such expenses can be significant. During a review of expenditures made by the Dallas office, internal audit noted that certain third party costs for document reproduction had been charged to the receivership as a reimbursable expense and that the cost was not allocated to specific assets.

We understand that the FADA is in the process of (1) formally clarifying its policy with regard to what cost items normally would be considered third party in nature, (2) determining whether allocation of "common" costs by asset is practical, and (3) amending its agreements with receivers.

2.3 Equipment Purchases.—Installation costs for various hardware items totalling approximately $50,000 and other small equipment and furniture purchases totalling approximately $150,000 were expensed during 1986. It appears that these amounts could have been capitalized and that the FADA fixed asset system is capable of accounting for such items.

We recommend that the FADA review its policy related to equipment acquisitions and, if appropriate, revise the policy to provide for the grouping of small items for capitalization purposes.

2.4 Reporting to Receivers.—The FADA management agreements with receivers specify that reporting to the receivers will be on the basis of generally accepted accounting principles (GAAP). In the following areas the current reporting are either not in technical conformity with GAAP or the potential exists that future reporting may not be in conformity with GAAP:

2.4.1 Establishing Asset Market Values.—The agreements with receivers refer to the establishment of net realizable market values (NRMV) pursuant to business plans. FADA management is in the process of developing a methodology for establishing market values which encompasses appraisal-driven sales price estimates and possibly the use of market finance costs. This process is not complete and involves the FADA working with the Office of Liquidations Division of the FSLIC. The FADA is also considering how current accounting literature may impact assets in the form of loans.

While it is generally agreed that the transfer of assets to a receiver is an event which triggers the revaluation of assets and establishing a new cost basis under GAAP, conformity with GAAP will depend on the valuation methodology adopted by the FADA. The FADA is conferring with us on this matter. In any event, until market values are established, the FADA obviously cannot report to receivers on a GAAP basis. We suggest that once a methodology is fully developed and implemented, the agreements be amended to define specifically that methodology.

2.4.2 Accrual Basis Reporting.—Costs incurred on behalf of receivers, which can be either capitalizable or expense items, but unpaid as yet by the FADA are not included in reports to receivers. Because the level of such costs has not been significant to date, we do not believe the impact to the receivers is material. We also understand that FADA management does not believe the impact of accruing such costs warrants the additional accounting expense the FADA would incur on behalf of the receiver.

We suggest that, if reporting is effectively on a cash basis, the agreements be modified to indicate such. In addition, the FADA should consider implementing procedures to isolate any large accrual items and consider whether such items (1) impact the fair market value data to be reported in the future or (2) should be communicated separately to receivers.

2.5 FHLBB Reporting Requirements.—The FADA is chartered as an Association and therefore appears to be subject to the rules and regulations of the Federal Home Loan Bank Board (FHLBB). However, unlike other Associations, the FADA does not engage in any of the traditional Thrift activities, e.g., the deposit taking and lending functions. Accordingly, the applicability of the rules and regulations to FADA and its reporting requirements to the FHLBB of Topeka are unclear.

We are informed that the FADA has made repeated efforts to clarify its operating and reporting requirements with the FHLBB. We encourage the FADA to continue its efforts in order to prevent any misunderstandings.

3. Processing cash disbursements and receipts (assets under management)

The FADA has made significant progress in the development of policies and procedures to control properly cash disbursements and receipts related to assets under management. The level of cash receipts and disbursement activity for assets under management, including regional activity, which currently is processed by the San Francisco office, was relatively insignificant in 1986 because very few capital expenditures were made. Our testwork included the vouching of a significant number of the receipts and disbursements made during the year. Following are our comments regarding errors noted during the testwork as well as other observations. Generally, it appears that errors are being detected by FADA procedures and that FADA personnel are very control conscious.

3.1 Invoice Processing.—

3.1.1 Propriety of Invoices.—Certain contained math errors or lacked supporting documentation. These deficiencies were detected by the asset accounting department after the items were approved for payment by asset managers. The asset managers should not approve items until invoices have been checked, and responsibility for checking the items should be clearly defined.

3.1.2 Classification of Expenditures.—We noted one instance when a capitalizable expenditure was mistakenly coded as an ex-

pense item. The FADA had established a detailed coding list for expenditures and should continue to emphasize the importance of checking the assigned codes.

3.1.3 Timing of Payments.—At present, the FADA issues cheques for vendor invoices on a periodic basis that does not fully utilize available days of credit. We understand, however, that FADA is designing a program to aggregate and schedule invoice payments in an effective manner. As the level of disbursements increases, effective cash management techniques will become increasingly important. We encourage implementation of the cash management program.

3.2 Cheque Issuance.—Two cheques were issued (and honored by the banks) without signatures. While the criteria established for requiring one or more signatures on cheques and the procedures to control the mailing of cheques appear to be appropriate, compliance with such procedures must continue to be emphasized.

3.3 Cash Receipts.—In two instances, details of rental receipts from property managers were either unclear or contained math errors. It is particularly important during this initial period of dealing with external property managers that any such errors detected, investigated, and documented.

We recommend that management continue to emphasize the importance of verifying the mathematical accuracy and reasonableness of property receipt reports. We recommend also that procedures be established to document effectively the performance of external property managers in this area.

We understand also that when cash is received directly by the receiver, typically during the transition period when the FADA first assumes management responsibilities, details of the transaction are forwarded by the receiver to FADA asset accounting, not to the asset manager. Accordingly, asset managers anticipating receipts from property managers sometimes spend time pursuing payment while the payment has actually been received. In addition, the resolution of problems, if any, with the third party property manager regarding such payments is delayed.

We recommend that a procedure be established whereby details of the receipts are channeled to the asset managers on a timely basis for their approval.

4. Other major areas

Following are our comments and recommendations regarding the status and direction of certain other major areas within the FADA:

4.1 Internal Audit Function.—The internal audit department consists of two individuals at present. During the FADA's initial phase of operations, internal audit has focused primarily on (1) assisting in the development of operating controls, (2) assessing the adequacy of contract documentation and (3) examining the propriety of disbursements and receipts for both Corporate and asset management activities. While we concur that these areas of focus have been appropriate during the initial stages of the FADA structural development, the organization is now reaching the stage where the internal audit scope should be expanded. Our comments regarding the areas of expansion follow:

4.1.1 Scope of Activities.—In a number of States there are significant assets which are producing income at present. We suggest that internal audit (1) develop an approach to obtain useful information about such assets (e.g., details of property manager location, number of units, asset manager concerns, etc.) and (2) incorporate such information into an audit plan that provides adequate coverage of both large and small assets and encompasses particular concerns asset managers may have about certain assets.

Different audit programs should be developed to address "full scope" and "limited scope" examinations of assets and external property managers. This process of developing audit programs is already underway in connection with our joint review, with internal audit, of a selected property manager in Southern California.

There has not been significant development activity to date for assets under management. Increase in such activity will require that internal audit focus designing on programs, including on-site visits to selected properties, to ensure the propriety of development costs.

4.1.2 Vendor Selection/Documentation Review.—The FADA is very aware of the importance of establishing and updating information regarding vendors (property managers, appraisers, brokers) and ensuring that contracts are adhered to by all parties.

Internal audit should continue to develop and refine audit programs to ascertain that (1) criteria established for approving vendors and updating the vendor files is adhered to by the FADA and (2) contracts are properly executed and adhered to by all parties. Step 2 can be performed in conjunction with the project examinations specified in section 4.1.1.

4.1.3 Appraisal Data for Asset Business Plans.—Asset business plan values will be based to a large extent on third party appraisals. A key internal audit function will be to establish an audit program to ensure a proper relationship between the appraisers' data and the values shown in business plans (and as used to compute management fees). The program should also include procedures to ensure that the third party reviews of appraisals planned by the FADA are executed in accordance with established policies.

4.1.4 Internal Audit Department Staffing.—The number of internal audit staff required and the structure of the department will of course depend on the level of FADA activity. It does appear, however, that two or more additional internal audit personnel will be required during 1987. Ultimately, it may be appropriate to have at least one internal audit person in each regional office in order to gain a better understanding of regional considerations. It may also be appropriate to consider assigning staff to particular functional areas.

4.2 Section of Vendors.—The FADA has been developing a database of qualified venders (contractors), including property managers, appraisers and brokers and during its initial stage of operations, has selected property managers and appraisers primarily on the basis of FADA personnel familiarity with the vendors' track record. Management has been stressing to headquarter and regional personnel the importance of well documented contractual arrangements with vendors, including the importance of confidentiality agreement provisions. The FADA also requires that its personnel sign confidentiality and code of conduct agreements.

As the list of vendors is now becoming sizable it will be increasingly important that procedures to ensure (1) the confidentiality of information and (2) employee independence with respect to vendors, are monitored and revised on an ongoing basis.

4.3 Development of Asset Business Plans.—The FADA agreements with receivers stipulate that asset business plans will be completed within 120 days of the FADA's assumption of management responsibilities. Completion of the plans normally requires obtaining (1) an appraisal (and appraisal review), which in turn requires that adequate information be available from the receivers' files or other sources, and (2) additional information about the property, e.g. liens, other claims, loan documentation, and project costs.

While the 120 day period should be achievable when project information is available and as the FADA gains experience, in many instances it appears that the project information necessary for the FADA to complete the asset business plans has not been available on a timely basis.

It may, therefore, be appropriate to modify the receiver agreements to state that business plans will be available within 120 days of the date adequate information is provided to the FADA. The term "adequate information" would have to be defined and presumably would encompass additional data for participation arrangements.

ATTACHMENT 4.2

FEDERAL ASSET DISPOSITION ASSOCIATION—FINANCIAL STATEMENTS, DECEMBER 1986

The Federal Asset Disposition Association (a wholly-owned subsidiary of the FSLIC)

Statement of Financial Condition, Dec. 31, 1986

Assets:	
Cash (including interest bearing deposits of $25,000)	$158,103
Federal funds	9,100,000
Investment securities (approximate market value of $9,759,000)	9,818,506
Fees receivable:	
Asset management fees	997,893
Advisory fees	135,744
Reimbursable expenditures receivable:	
Receivership contracts.	849,726
Advisory contracts	93,151
Accrued interest receivable	35,084
Property and equipment, net	2,223,632
Federal Home Loan Bank Stock, at cost	48,000
Prepaid expenses and other assets	166,805
Total	23,626,644
Liabilities and stockholder equity:	
Short-term borrowings	800,000
Other liabilities and accrued expenses	1,309,554
Deferred lease payable	78,493
Total liabilities	2,188,047
Stockholder's equity:	
Common stock, no par value, stated value $1,000 per share. Authorized 500,000 shares; issued and outstanding 25,000 shares	25,000,000
Additional paid-in capital	

Preferred stock, no par value. Authorized 500,000 shares; none issued	
Retained deficit	(3,561,403)
Total stockholder's equity	21,438,597
Total	23,626,644

The Federal Asset Disposition Association (a wholly-owned subsidiary of the FSLIC)

Statement of Operations for the period Nov. 5, 1985 (date of inception) to Dec. 31, 1986

Revenue:	
Asset management fee income	$1,343,067
Asset advisory and other fees	291,951
Total revenues	1,635,018
Operating expenses:	
Compensation and related benefits	3,363,527
Occupancy	318,566
Property and equipment rentals and supplies	366,829
Depreciation	94,268
Telephone	136,548
Travel	468,299
Executive search fees	244,463
Systems consulting	394,749
Legal services	149,384
Other professional services	558,605
Other	382,410
Total operating expenses	6,477,648
Operating loss	4,842,630
Other income and expense:	
Interest income	1,281,833
Interest expense	606
Loss before income taxes	3,561,403
Income taxes	
Net loss	3,561,403

THE FEDERAL ASSET DISPOSITION ASSOCIATION (A WHOLLY-OWNED SUBSIDIARY OF THE FSLIC)

[Statement of Stockholder's Equity for the period Nov. 5, 1985 (date of inception) to Dec. 31, 1986]

	Common stock	Additional paid-in capital	Preferred stock	Retained deficit	Total
Initial issuance of common stock	$25,000,000				25,000,000
Net loss from date of inception to December 31, 1986				($3,561,403)	(3,561,403)
Balances at December 31, 1986	25,000,000			(3,561,403)	21,438,597

The Federal Asset Disposition Association (a wholly-owned subsidiary of the FSLIC)

Statement of Changes in Financial Position for the period Nov. 5, 1985 (date of inception) to Dec. 31, 1986

Sources of cash:	
Financing transactions:	
Proceeds from stock issuance to FSLIC	$25,000,000
Short-term financing:	
Short-term borrowings	800,000
Total cash from financing transactions	25,800,000
Uses of cash:	
Operating activities: Net loss	3,561,403
Items not requiring cash:	
Depreciation of property and equipment	(94,268)
Deferred lease payable	(78,493)
Cash used for operations	3,388,462
Cash used for (provided by) changes in:	
Management fees receivable	997,893
Advisory fees receivable	135,744
Reimbursable expenditures receivable	942,877
Accured interest receivable	35,084
Prepaid expenses and other assets	166,805
Other liabilities and accrued expenses	(1,309,554)
Cash used for financing operating activities	968,849
Investment transactions:	
Purchase of investment securities	9,818,506
Purchase of Federal funds	9,100,000
Additions to property and equipment	2,317,900
Purchase of Federal Home Loan Bank stock	48,000
Total cash used for investment transactions	21,284,406
Net increase in cash	158,103
Cash, beginning of period	
Cash, end of period	158,103

THE FEDERAL ASSET DISPOSITION ASSOCIATION

(A wholly-owned subsidiary of the FSLIC)

Notes to Financial Statements

December 31, 1986

(1) *Organization and Significant Accounting Policies:*

The Federal Asset Disposition Association (the FADA), whose stock is wholly-owned by the Federal Savings and Loan Insurance Corporation ("FSLIC"), was chartered in 1985 under Sections 406 (a) and (b) of the National Housing Act of 1934 to help financially troubled thrifts manage and dispose of real estate assets, including loans, pursuant to asset management contracts with these Thrifts or, in most circumstances, the Thrift receivers. As agent serving on behalf of receivers, the FADA does not take title to underlying assets but does have the fiduciary responsibilities inherent in the agency function.

The following accounting policies, together with those disclosed elsewhere in the notes to financial statements, represent significant accounting policies that the FADA follows in preparing its financial statements.

(a) *Investment in Securities:*

Investment securities, consisting of U.S. government securities at December 31, 1986, are stated at cost, adjusted for amortization of discounts and premiums.

(b) *Investment in Federal Home Loan Bank Stock:*

As a member of the Federal Home Loan Bank System, the FADA is required to acquire and hold a specified number of shares of the capital stock of the Federal Home Loan Bank of Topeka, Kansas.

(c) *Property and Equipment:*

Property and Equipment are stated at cost less accumulated depreciation and amortization. Depreciation of office property and equipment is computed on the straight-line basis over the estimated useful lives of the various classes of assets. Leasehold improvements are amortized on a straight-line basis over the remaining term of the lease or the estimated useful life of the asset, whichever is shorter. Maintenance and repairs are charged to expense; improvements are capitalized.

Purchases of equipment are capitalized to the extent that the expenditures individually exceed $300. Purchases of supplies are charged to expense as incurred.

(d) *Fee Income and Reimbursable Expenses:*

Asset management and advisory fee income is accrued and billed monthly. Reimbursable expenditures in connection with the management of assets are recorded as receivables when paid by the FADA and are billed to receivers monthly. These third-party expenditures are not recorded in the FADA statement of operations.

(e) *Collections on Behalf of Receivers:*

The FADA collects revenues in connection with income producing assets under management and remits such revenues directly to the receiver. The FADA currently does not collect or process loan payments related to assets under management.

(f) *Start-up Costs:*

The FADA has incurred significant start-up costs, including consulting fees in connection with the design and implementation of its asset accounting and reporting system software. These start-up costs have been charged to expense.

(g) *Income Taxes:*

Deferred income taxes are provided on earnings that are reported for financial statement purposes in a different period than for income tax purposes.

(2) *Assets Under Management Contract:*

At December 31, 1986 the FADA had under management contract real estate assets, including loans and loan participations, on behalf of seven FSLIC receiverships. Asset totals, by property type and by location, follow. The amounts below (dollars in thousands) represent receivership net book value per the receivers' records (note 3) and are not intended to be indicative of current market values (unaudited).

	Californ-nia	Florida	Texas	Other	Total
Land	$14,526	$75,639	$188,416	$41,402	$319,983
Residential:					
1–4 units	12,159	61,826	12,950	21,367	$108,311
Multifamily	45,569	59,594	41,748	69,954	216,865
Commercial	77,147	215,949	333,109	117,023	743,228
Industrial	550	13,341	18,480	2,912	35,283
Other				38,356	38,356
Total	149,951	426,349	594,703	291,023	1,462.026

The total assets under management contract includes a significant number of assets subject to participation agreements. For participations in which the receiver is not the lead participant, the asset total includes only the receivers percentage interest in the total asset.

(3) *Asset Management Fees:*

The FADA manages and disposes of receivership assets for a fee, which currently ranges from .50 to .75 percent of the asset value per annum. Asset value initially is the receivership net book value, and is subsequently adjusted to reflect estimated market value pursuant to appraisals and asset disposition plans. As of December 31, 1986, asset disposition plans had not been finalized for the initial assets under management.

For assets subject to participation agreements, asset management fees are calculated on 100 percent of the asset value in those instances when the receiver is the lead participant, and on the receiver's participation percentage when the receiver is not the lead.

(4) *Reimbursement Expenditures:*

In addition to management fees, the FADA is reimbursed by the various receiverships for expenditures related to assets it manages. Such expenditures include all third party payments related to the assets under management, including subcontracted property management fees. The FADA also has been reimbursed for its interest costs of financing such third party expenditures.

For the period ended December 31, 1986, the FADA charged receiverships a total of $1,539,000 for reimbursable expenditures.

(5) *Property and Equipment:*

Property and equipment at December 31, 1986 is comprised of the following:

		Depreciation period
Computer hardware and software	$1,783,151	3 years
Furniture and fixtures	534,749	8 years
	2,317,900	
Less: accumulated depreciation and amortization	94,268	
	2,223,632	

(6) *Short-Term Borrowings:*

The FADA short-term borrowings of $800,000 are drawn against a $2 million open line of credit advance with the Federal Home Loan Bank of Topeka. The open line of credit advance is backed by a contract between the FSLIC and the Federal Home Loan Bank of Topeka under which the FSLIC has guaranteed repayment of up to $50 million of Bank advances to the FADA. Under the terms of the contract, the repayment guarantee applies only to advances used for the purpose of funding operations in which the FADA has a legal agreement with the FSLIC as receiver or conservator for an insured institution.

Interest is charged to the FADA on outstanding draws at the FHLB cost of funds rate, which was 6.75 percent at December 31, 1986. The open line of credit is reviewed on an annual basis by the lender.

(7) *Incentive Compensation Plan:*

The FADA has established an incentive compensation plan for its key officers and managers. The plan is designed to add an incentive element to FADA management compensation packages similar to that which is prevalent in many real estate enterprises. Awards under the plan are based on both individual performance and overall corporate performance. The maximum award as a percentage of base salary ranges from 15 to 60 percent. Award amounts are not linked to proceeds from asset disposition and must be approved by the Board of Directors.

(8) *Income Taxes:*

The FADA incurred a net operating loss of $3,561,000 for the period from inception to December 31, 1986 for financial statement purposes. Accordingly, no provision for income taxes was made. The tax benefits of the net operating loss carryforward can be recognized as it is utilized to offset taxable income reported in succeeding years. The net operating loss carryforward period expires in 2001.

(9) *Commitments and Contingencies:*

At December 31, 1986 the FADA leased office space and equipment in regional and satellite locations. Future minimum lease payments under the terms of existing noncancelable operating leases in excess of one year are as follows:

	Office space	Equipment	Total
Year ending December 31:			
1987	$1,273,905	$235,176	$1,509,081
1988	1,461,670	235,176	1,696,846
1989	1,584,925	232,892	1,817,817
1990	1,663,158	171,117	1,834,275
1991	1,392,624	18,533	1,411.157
Thereafter	147,493		147,493
Total	7,523,775	892,894	8,416,669

Management is not aware of any pending or threatened litigation against the FADA as of December 31, 1986.

(10) *FHLBB Regulations:*

Since the FADA is chartered under Section 406 of the National Housing Act, it is considered subject to Federal Home Loan Bank Board (FHLBB) Regulation. Such regulations govern the activities of Thrift Institutions and contain various financial requirements, e.g., that Thrifts maintain levels of regulatory net capital and investment in liquid assets, as defined by regulation. At December 31, 1986, the FADA's regulatory net capital and investment in liquid assets exceeded amounts required by regulation.

ATTACHMENT 4.3

FEDERAL ASSET DISPOSITION ASSOCIATION—FINANCIAL STATEMENTS, DECEMBER 1987

FEDERAL ASSET DISPOSITION ASSOCIATION

[Balance Sheet Dec. 31, 1987]

	Dec. 31, 1987	Nov. 30, 1987
Assets:		
Cash and cash equivalents	$1,553,521	($102,987)
Investment in FHLB stock	424,100	410,200
Marketable securities	5,017,314	6,006,634
Reimbursable costs receivable	6,180,654	
Asset management fees receivable	3,300,291	
Advisory and other fees receivable	187,350	
Total fees receivable	3,487,641	4,007,926
Expenses receivable from receiverships	8,410,104	
Expenses receivable from contracts	166,678	
Total reimburseable expenses receivable	8,576,782	6,673,010
Interest receivable	45,173	86,504
Other accounts receivable	160,608	155,354
Furniture and equipment, L/H improvements	4,720,395	
Less: Allowance for depreciation, amortization	(1,017,931)	
Furniture and equipment, net	3,702,464	3,148,924
Prepaid expenses and other assets	410,349	481,038
Total assets	29,558,606	20,866,603
Liabilities and stockholder's equity:		
Liabilities:		
Short-term borrowings	10,192,513	6,651,784
Interest payable	2,175	
Taxes payable		
Accrued expenses payable	2,897,026	2,654,990
Contingent liability—reimbursable costs receivable	6,180,654	
Total liabilities	19,272,368	9,306,774
Stockholder's equity		
Common stock—500,000 shares authorized, no par, 25,000 Shs issued	25,000,000	25,000,000
Preferred stock—500,000 shares authorized, none issued		
Retained earnings (deficit)	(14,713,762)	(13,440,171)
Total stockholder's equity	10,286,238	11,559,829
Total liabilities and stockholder's equity	29,558,606	20,866,603

FEDERAL ASSET DISPOSITION ASSOCIATION

[Income statement—actual versus plan, Dec. 31, 1987 year-to-date]

	Dec. 31, 1987 (year-to-date)	Plan (year-to-date)	Better (worse) than plan
Revenue:			
Asset management fees	$19,058,825	$22,635,000	($3,576,175)
Asset advisory fees	1,318,665	2,377,000	(1,058,335)
FSLIC corporate fees	264,164	1,871,000	(1,606,836)
Total revenue	20,641,654	26,883,000	(6,241,346)
Operating expense:			
Personnel expense	19,059,268	17,841,000	(1,218,268)
Occupancy expense	1,917,105	1,741,000	(176,105)
Equipment expense	1,878,056	2,087,000	208,944
Telephone expense	805,480	878,000	72,520
Travel expense	1,341,084	1,537,000	195,916
Management consulting	1,587,656	151,000	(1,436,656)
Public accountants	70,879	80,000	9,121
Executive search fees	644,137	237,000	(407,137)
Systems consulting	599,485	500,000	(99,485)
Legal expenses	453,820	500,000	46,180
Other professional services	323,265	220,000	(103,265)
Insurance	255,327	631,000	375,673
Contingency		1,000,000	1,000,000
All other expense	1,376,541	1,377,000	459
Total operating expense	30,312,103	28,780,000	(1,532,103)
Operating income (loss)	(9,670,449)	(1,897,000)	(7,773,449)
Other income and expense:			
Interest and dividend income	963,571	1,655,000	(691,429)
Interest expense	533,112	202,000	(331,112)
Gain (loss) on investment securities	(24,522)	0	(24,522)

FEDERAL ASSET DISPOSITION ASSOCIATION—Continued

[Income statement—actual versus plan, Dec. 31, 1987 year-to-date]

	Dec. 31, 1987 (year-to-date)	Plan (year-to-date)	Better (worse) than plan
Gain (loss) on fixed asset sales	(10,812)	0	(10,812)
Other income	537	0	537
Net other income and expense	395,662	1,453,000	(1,057,338)
Net income (loss) before effect of change in accounting estimates	(9,274,787)	(444,000)	(8,830,787)
Effect of change in accounting estimates:			
Adjustment in asset management fees	(1,946,814)	0	(1,946,814)
Net income (loss) after effect of change	(11,221,601)	(444,000)	(10,777,601)

FEDERAL ASSET DISPOSITION ASSOCIATION

[Income statement, month of December 1987]

	December 1987	November 1987
Revenue:		
Asset management fees	$1,696,013	$1,682,066
Asset advisory fees	50,813	61,324
FSLIC corporate fees	3,130	(7,700)
Total revenue	1,749,956	1,735,690
Operating expense:		
Personnel expense	1,706,617	1,955,033
Occupancy expense	181,273	140,727
Equipment expense	194,911	118,643
Telephone expense	74,027	47,841
Travel expense	216,831	100,777
Management consulting	206,779	40,984
Public accountants	17,446	53,433
Executive search fees	23,387	35,860
Systems consulting	50,900	56,376
Legal expenses	53,382	1,881
Other professional services	49,190	39,121
Insurance	26,406	24,800
All other expense	204,904	138,912
Total operating expense	3,006,053	2,754,388
Net operating income (loss)	(1,256,097)	(1,018,698)
Other income and expense:		
Interest and dividend income	67,789	66,393
Interest expense	83,982	60,337
Gain (loss) on investment securities	(1,213)	(162)
Gain (loss) on fixed asset sales	(625)	0
Other income	537	0
Net other income and expense	(17,494)	5,894
Net income (loss)	(1,273,591)	(1,012,804)

Federal asset disposition association

[Statement of changes in financial position for the 12 months ending Dec. 31, 1987]

Cash and cash equivalents—Dec. 31, 1986	$9,258,103
Operating activities:	
Net earnings (Loss)	(11,221,601)
Items not requiring cash:	
Depreciation and amortization	940,339
Cash provided by (used for) operations	(10,281,262)
Cash provided by other sources:	
Additional short term borrowings	9,392,513
Contingent Liability—Reimbursable Costs Receivable	6,180,654
Sale of Marketable Securities	4,801,192
Increase in accrued expenses payable	1,968,108
Interest Payable	2,175
Cash provided by other sources	22,344,642
Cash used for:	
Additions to furniture, equipment and leasehold improvements	2,775,659
Purchase of FHLB stock	376,100
Increases in:	
Reimbursable expenses receivable	7,637,370
Reimbursable Costs Receivable	6,180,654
Asset management fees receivable	2,332,333
Prepaid expenses and other assets	292,976
Interest and other accounts receivable	121,264
Asset advisory and other fees receivable	51,606
Cash used	19,767,962
Decrease in cash	(7,704,582)
Cash and cash equivalents—Dec. 31, 1987	1,553,521

Federal asset disposition association

[Statement of changes in financial position for the month ending Dec. 31, 1987]

Cash and cash equivalents—Nov. 30, 1987	($102,987)
Operating activities:	
Net earnings (loss)	(1,273,591)
Items not requiring cash:	
Depreciation and amortization	163,463
Cash provided by (used for) operations	(1,110,128)
Cash provided by other sources:	
Contingent Liability—Reimbursable Costs Receivable	6,180,654
Increase in short term borrowings	3,540,729
Sale of Marketable Securities	989,320
Accrued expenses payable	242,036
Interest payable	2,175
Decreases in:	
Asset management fees receivable	527,538
Prepaid expenses and other assets	70,689
Interest and other fees receivable	36,077
Cash provided by other sources	11,589,218
Cash used for:	
Reimbursable Costs Receivable	6,180,654
Increase in reimbursable expenses receivable	1,903,772
Additions to furniture and equipment	717,003
Purchase of FHLB stock	13,900
Increase in advisory and other fees receivable	7,253
Cash used	8,822,582
Decrease in cash	1,656,508
Cash and cash equivalents—Dec. 31, 1987	1,533,521

FEDERAL ASSET DISPOSITION ASSOCIATION NOTES TO THE FINANCIAL STATEMENT

1. ACCOUNTING POLICIES

General

The Federal Asset Disposition Association (FADA) is a special purpose Federally Chartered Savings and Loan Association, chartered on November 5, 1985 pursuant to Section 406 of the National Housing Act. The FADA is wholly owned by the Federal Savings and Loan Insurance Corporation (FSLIC).

The accounting and reporting policies of the FADA are in accordance with generally accepted accounting principles.

Furniture and equipment

Furniture and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are charged to expense over the estimated useful lives of the assets on a straight line basis.

Fee income and reimbursable expenses

Asset management and advisory fees are accrued and billed monthly. Until net realizable values are established, asset management fees are accrued on the basis of estimated value of the assets managed and are subject to retroactive adjustment.

Reimbursable expenses for the management of assets are accrued to accounts receivable as incurred and billed monthly.

Marketable securities

Marketable Securities are recorded as of settlement date.

2. ASSETS UNDER MANAGEMENT

As of the end of December, the FADA was managing approximately $4.4 billion of real estate assets based on estimated current book value from thirty-two FSLIC liquidating and supervised associations. Estimated net realizable value of these assets is approximately $3 billion. Per the management contracts with FSLIC or supervised associations, FADA is required to calculate net realizable values per prescribed procedures requiring R41(c) appraisals. These real estate assets are owned by the institutions and thus do not appear on the balance sheet of the FADA.

3. REIMBURSABLE COSTS RECEIVABLE

FADA has requested $6,180,654 from the FSLIC to compensate FADA for legal services, appraisal services, and management fees on assets with no book value for fee billing purposes. During 1987, FADA has provided legal and appraisal services that

are not being provided by other asset management contractors retained by the FSLIC.

The $6,180,654 has been shown on the balance sheet as reimbursable costs receivable and as contingent liability. Upon collection of the receivable these statements will be restated to include this amount in the income statement as revenues or as a reduction in expenses. The amount is subject to adjustment pending final approval of the FSLIC.

4. MARKETABLE SECURITIES

Marketable securities include obligations of the U.S. Government, other Federal Agencies and Bankers Acceptances. As of December 31, 1987 market value was $4,856,563.

5. CAPITAL LEASE

In 1987, FADA entered into a five year lease on data processing equipment that has been recorded as a capital lease. The fair market value of that equipment on the date of lease was $589,000.

The following is a schedule by years of future minimum lease payments under this lease:

[In thousands of dollars]

Year ending December 31:	
1988	139
1989	139
1990	139
1991	139
1992	35

6. SHORT TERM BORROWING

FADA's short term borrowings are drawn against an open line of credit with the Federal Home Loan Bank of Topeka, which is backed by a contract between the FSLIC and Federal Home Loan Bank, under which the FSLIC has guaranteed repayment of up to $50 million in advances to FADA. The repayment guarantee applies only to advances used for funding asset related activities in which FADA has an agreement with the FSLIC as receiver or conservator for an insured institution.

In addition to the guarantee from the FSLIC, the FHLB of Topeka asked for additional collateral in the form of an Advance Agreement whereby FADA provides collateral from its management fees and reimbursable advances receivable. In addition, FADA will leave securities equal to 20% of advances in the possession of the Bank. This agreement was signed in September.

7. CHANGE IN ACCOUNTING ESTIMATES

In July, FADA adjusted downwards the asset base of six receiverships to reflect estimated net realizable values (NRV), in accordance with the amended asset management agreement dated May 27, 1987. Per the management contracts with FSLIC or supervised associations, FADA is required to calculate net realizable values per prescribed procedures requiring R41(c) appraisals.

Net realizable values estimated to date are approximately two-thirds of net takeover values, and significantly below what FADA estimates will be ultimately recovered. The change in the estimate of the net realizable values reduced FADA's fee income by $2.5 million. Annualized, the change will reduce FADA's fee income by approximately $5.7 million. Prior to the amendment, FADA's management fee was based on net takeover values (including reserves). Year to date earnings have been restated.

As additional net realizable values are determined for assets under management, adjustments may be necessary to revenues. It is difficult to say whether any future adjustments will have a material impact on these financial statements.

ATTACHMENT 4.4

Committee staff's summary of compensation data for FADA's senior executive positions [1] as of March 1, 1988

Position	Salary
1. Chief executive officer [4]	
2. President/COO [2]	$250,000
3. SVP real estate	183,750
4. SVP general counsel [2]	152,250
5. SVP administration	135,000
6. SVP operations	109,200
VP/Directors:	
7. Valuation services	145,800
8. Asset management	140,000
9. Communications	100,000
10. Human resources	91,520
VP/Managers:	
11. Participations	132,500
12. Risk management	70,000
13. WDC office	73,500
14. Audit [3]	72,000
15. Planning and control	69,000
16. Asset accounting	63,480
17. MIS/Technology	63,000
18. Corporate accounting	57,200
19. Finance and administration [3]	86,100
20. Contractor administration	84,000
21. FSLIC account coord [3]	
22. Regional manager III	131,250
23. Regional manager III	131,250
24. Regional manager III	130,000
25. Regional manager III [2]	120,000
26. Regional manager II	105,000
27. Regional manager I	87,200
28. Regional counsel—SF [4]	
29. Regional counsel III	126,000
30. Regional counsel III	115,000
31. Regional counsel III	111,364
32. Regional counsel II	100,000

[1] Compensation for FADA's senior executives will be reassessed upon the appointment of a new FADA chief executive officer.
[2] Salary at termination.
[3] Position added after August 1987.
[4] Position to be filled.

ATTACHMENT 5.1

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS, SUPERVISION, REGULATION AND INSURANCE OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC, November 12, 1987.

Managing Officer,
FSLIC as Receiver.

DEAR ———: The Committee is conducting a review of the organization and operations of the Federal Asset Disposition Association ("FADA"). As part of that review, it is compiling information on the cost, quality and relative success of asset management services available from FADA, private-sector companies and from individual receiverships.

The Committee requests that you provide it with an analysis of the additional cost and resources you would incur on a monthly basis to perform the asset management, marketing and disposition services currently being performed by FADA for assets under your control. Also, please provide the amount FADA has billed your receivership to date on a monthly basis.

The Committee would appreciate your prompt reply to the attention of Mr. Gary Bowser, B303 Rayburn House Office Building, Washington, D.C. 20515.

Sincerely,

FERNAND J. ST GERMAIN,
Chairman.

FSLIC AS RECEIVER FOR RESPONSE TO HOUSE BANKING COMMITTEE REQUEST OF NOVEMBER 12, 1987

As requested by the Honorable Fernand J. St Germain, (copy enclosed) this report has been compiled in an effort to analyze the incremental costs which would be incurred by the Savings and Loan Receivership if performance of the duties currently assigned to the Federal Asset Disposition Association became the responsibility of the Receivership Office. The report is organized according to functional responsibilities followed by a schedule of management fees paid to the FADA, as requested. Additionally, a narrative excerpt describing the organization and staffing of the Receivership Office along with an organization chart is provided in order that a reader unfamiliar with the Sunrise operation may become familiar, if desired.

This report is predicated upon certain broad assumptions which are detailed within the body of the report and should be reviewed with the understanding that numerous caveats may be applicable.

As detailed in the accompanying sections of this report, management fees paid to the FADA to date total approximately $3.2 million which equates to approximately $250,000 per month. These fees do not include expenses for which the FADA is entitled to reimbursement. One of the principal assumptions of this analysis is that the vast majority of the subcontractor expenses incurred by the FADA would continue if direct management of the assets were reassigned to the receivership. The principal exception being the expense associated with subcontract asset managers of unimproved land.

Based on the analyses detailed in the Loan and REO sections of this report, incremental expenses of the Receivership associated with the assumption of direct management of the portfolio assigned to the FADA would be as follows:

Loan department	$494,056
REO department	327,250
Total (annually)	821,306

Since the majority of the duties associated with the taxes and insurance aspect of the FADA portfolio is either contracted out, performed by receivership staff or performed by (our loan servicer); no significant increase in expenses would be anticipated. Likewise, since the receivership has an appraisal department and the FADA contracts out the review of all appraisals a significant increase in expenses would not be expected in this area either. However, for discussion purposes, a 10% adjustment to compensate for increased ancillary functions is not considered unreasonable and would bring the total increased expenses to $903,436-rounded to $900,000.

The $900,000 increased expense to the receivership compares favorably to the annualized average of $3 million currently being paid to the FADA for management fees. As detailed in the REO section of the report, we would also expect to be able to reduce fee management paid to subcontractors from $1,372,160 to $534,000. These figures are estimates of amounts paid to subcontractors solely for management and do not include expenses such as appraisals, engineering studies, legal fees, etc. The estimate of $534,000 is based upon retention of subcontractors on 17 assets which we realize we do not have the expertise in-house to manage or are uneconomical to manage in-

house due to geographic location. These estimated expense reductions do not include disposition fees the FADA pays subcontractors, deficits from operations which either FSLIC Corporate or the receivership will have to pay ultimately or business plan preparation expenses. Based on the $233,000,000 REO portfolio currently assigned the FADA (assuming that future REO's would more than offset the decrease in the actual value of the portfolio), a disposition fee of 1 point equates to $2.33 million to be paid subcontractors.

In summation, the following would appear to indicate that significant savings could be realized at the receivership if partial or full reassignment of the portfolio assigned to the FADA were to occur:

FADA management fees	$3,000,000
Subcontractors (excl. appraisals, legals, etc.).....	1,372,160
Total	4,372,160
Less:	
Increased receivership expense	900,000
Subcontractors	534,000
Savings.....	2,938,160 ($244,847/mo.)

It should be noted that due to the breadth of the requested report and the unavailability of certain specific information; a more accurate assessment may result within the context of a more comprehensive analysis. However, it would also appear that potential savings which have been estimated in this report are so great that any savings at all would disappear only in the event of gross inaccuracies.

ATTACHMENT 6.1

FEDERAL ASSET DISPOSITION ASSOCIATION—MEETING OF THE BOARD OF DIRECTORS, MAY 4-5, 1987

MINUTES

Meeting: A meeting of the Board of Directors of the Federal Asset Disposition Association ("FADA") was convened in the Doubletree Inn, Atlanta, Georgia on May 4, 1987.

Attendance by Directors: The following Directors were present: W.F. McKenna, Chairman; B. Beeksma; E.R. Biron; T.E. Bomar; G.J. Levy; J.B. Zellers; T.C. Connell, *ex-officio;* E. Calnan—*ex-officio;* R.B. Payne—*ex-officio.*

Others in attendance: The following other person was present: Robert J. Axley, Senior Vice President & General Counsel, FADA

General session: The Chairman called the meeting to order at 5:25 p.m., EDT.

Approval of minutes: Upon motion duly made and seconded the minutes from the previous meeting were approved.

Mr. McAllister reported that the institution of which he is the Chairman, San Antonio Savings Association ("SASA"), had been requested to contract with Vernon as the Management Consignment Program manager. He reported that the Special Agreement with the Federal Home Loan Bank of Dallas and Vernon was very restrictive and that SASA was attempting to work with the Board of Vernon and the Dallas Bank to make the Special Agreement less restrictive. He reported that part of the delay in obtaining approval of the FADA contract by the Board of Vernon resulted from the delivery of a letter from Mr. Robert Brick an employee of the FSLIC, to the Board of Vernon advising them of the FSLIC staff's position with respect to the relationship between Vernon and FADA. A copy of Mr. Brick's letter is contained within the minute file for this meeting.

Ms. Payne reported to the Board that FADA had been operating under the terms of the Asset Advisory Agreement and that the Asset Management Agreement approved by the FSLIC for use with FSLIC receivers and proposed for use in the Vernon case, allowed FADA greater operating flexibility. Unlike the terms of the Asset Advisory Agreement, the Asset Management Agreement allowed FADA to operate within certain parameters without obtaining Vernon approval for each specific action taken.

Mr. Bomar expressed concern that the letter from Mr. Brick could very well have legal implications involving liability to FADA officers and directors. Mr. Connell stated that the FHLBB was having discussions as to who was responsible for oversight and supervision of FADA and the proper utilization of FADA in receiverships and in the management consignment program. Mr. McKenna stated that the Board of Directors of FADA was responsible for supervision of FADA and that that responsibility was not delegated.

ATTACHMENT 7.1

FEDERAL SAVINGS & LOAN INSURANCE CORPORATION, RECEIVER FOR VERNON SAVINGS & LOAN FSA,

MEMORANDUM

To: ——.

From: ——.

Re: Alternative Asset Management Strategies by the FSLIC As Sole Receiver For Vernon Savings & Loan Association, FSA ("Receiver").

Date: February 8, 1988.

INTRODUCTION

In accordance with Federal Home Loan Bank Board direction under Resolution No. 87-1191, ("Resolution") dated November 19, 1987, concerning the liquidation of Vernon Savings and Loan Association, FSA ("Vernon"), the Receiver has reviewed the various options available for asset management services and forwards its recommendation herein to the Director for approval, provided that the final form of any asset management contract is approved by the Office of General Counsel (OGC). In order to properly evaluate for recommendation the Vernon Asset Portfolio, the Receiver reconciled the Vernon asset database with the accounting general ledger, including the sold portion of all participations (Vernon acting as lead lender). The results of this reconciliation are displayed in Exhibit 1 both geographically and by asset type. The Vernon asset management portfolio encompasses 693 assets totaling in excess of $1.88 billion. The Receiver further sorted this information to arrive at an asset management portfolio suitably assigned to an outside manager in a manner typical of previous Receivership contracts. This portfolio, as displayed in Exhibit 2 by asset type, includes only those assets (and related loans) involved in complex loan workouts and commercial real estate properties. The proposed asset management portfolio consists of 234 assets amounting to over $1.1 billion with an estimated Net Realizable Value of $600 million. The Receiver's recommendation is based upon its belief of which alternative, discussed below, would best serve to liquidate Vernon in an orderly fashion and maximize the value of its assets on behalf of the creditor estate.

RECOMMENDATION

The Receiver requests approval from the Director to allow and so direct the Federal Asset Disposition Association Vernon employees ("FADA/Vernon") to merge with the Receivership staff at their current salary and benefit level.

ALTERNATIVES

1. The Receiver to receive authority from the Director to merge the Portfolio Manager and Sr. Asset Managers of FADA/Vernon with the Receivership staff, at their current salary and benefits, and contract for third party asset management services where needed.

2. The Receiver receive approval from the Director to enter into a management service contract with FADA for those assets located in the State of Texas and other states, except for California and Florida. In addition, receive approval from the Director to contract with a third party asset management service company(s) to manage those assets located in California and Florida.

3. The Receiver obtain approval from the Director to contract with FADA for all asset management services.

DISCUSSION

1. *Recommendation.* The FADA/Vernon staff has managed the Vernon asset portfolio, under a services agreement with the Management Consignment Program Institution, since March 20, 1987. By merging the FADA/Vernon employees with the Receivership, the continuity of management and asset specific knowledge would be maintained. It should be noted that this group has been separated from the Regional FADA staff of officing at the old institution location. The merging of staff would reduce duplicated labor hours and provide for a clear line of authorized authority as delegated under the Resolution. However, the most significant attribute to this recommendation is the significant cost savings. As illustrated in Exhibit 3 the recommended alternative would save the Receivership $13,969,754, in *present value* dollars or a 63.5% cost savings in comparison to the proposed FADA/Receiver asset management services fee structure. When comparing this same recommendation with the proposed standard form asset management fee structure, as reflected in Exhibit 4, the results are again significant amounting to a cost difference of $7,854,724 in present value dollars or a 49.45 percentage cost savings. The assumptions utilized in this analysis accompanies the Exhibit. To the best of my knowledge these assumptions accurately reflect present day conditions.

2. *Alternative No. 1.* Hiring the Portfolio Manager and Sr. Asset Manager would again preserve continuity in the management of the Vernon asset portfolio. This alternative is preferred over the remaining alternatives due to its cost savings when comparing the FADA/Receiver asset management services fee structure with the standard form asset management fee structure. The comparative difference in fee structure, as reflected in Exhibits 3 and 4, is $6,115,030 or 44% cost savings. Additionally, this alternative allows flexibility in hiring an asset management contractor for it's particular expertise. Due to the many different type and location of assets in the Vernon portfolio, this is of particular importance.

3. *Alternative No. 2.* This alternative would allow for the Vernon asset management portfolio to be divided geographically. The predominant location of assets are in

the states of Texas, California, and Florida. Due to the complexities of California and Florida laws, including lender liability, zoning, foreclosure and real estate transactional, it benefits the Receivership to contract with a company experienced in these areas. Additionally, an asset management company experienced in California and Florida would provide insight into real estate property markets not readily available to the Receiver or FADA/Vernon. The oversight of FSLIC's Regional Offices in these areas would further strengthen the Receiverships asset management knowledge.

4. *Alternative No. 3.* The increased cost of contracting with FADA is hard to ignore. The current FADA/Vernon staff is talented and experienced with the Vernon asset portfolio. They have demonstrated an acceptable knowledge of the Vernon portfolio and proficiency in analyzing alternatives. However, the cost savings under the recommendation above makes entering into a FADA asset management contract prohibited.

EXHIBITS

Exhibit One—Vernon Asset Portfolio By Geographic Location and Asset Type.

Exhibit Two—Proposed Vernon Asset Management Contract Portfolio Type.

Exhibit Three—Vernon Asset Management Cost Analysis As Per FADA Proposed Management Fee Structure.

Exhibit Four—Vernon Asset Management Cost Analysis Standard Form Asset Management Fee Structure.

					Assumption explanations
SCENARIO ASSUMPTIONS					
Discount rate	10.73				Effective Yield on FSLIC recap bonds.
Inflation rate	6.00				Based on 1987 inflation rate plus inflation expectations.
FADA fee basis points	YEAR 1	YEAR 2	YEAR 3 ON		Per proposed FADA contract (Draft 1/22/88).
Mgmnt, legal & acct. fees	75	75	75		Points on net takeover value.
Disposition fee	150	125	100		Points on proceeds from sale [(1) Assume 90.0% of appraised value].
Appraisal review fee	5	5	5		Points on appraised value [(1) Assume 59.0% of net takeover value]. (1) Based on random sample of asset appraisals / sales.
Salaries & benefits	NUMBER	MONTHLY SALARY	ANNUAL SALARY	ANNUAL BENEFITS	
FADA asset management staff:					Estimated FADA employee salaries. This estimate, as it relates to numbers, was arrived at through prior conversations with FADA.
Portfolio manager	1	$8,333	$100,000	$38,000	
Senior asset manager	5	6,667	80,000	30,400	
Asset manager	20	3,750	45,000	17,100	
Appraiser	1	6,250	75,000	28,500	
Property manager	2	2,500	30,000	11,400	
Legal	3	5,833	70,000	26,600	
Accounting	2	2,083	25,000	9,500	
Administrative	14	1,667	20,000	7,600	
Total	48	$37,083	$445,000	$169,100	
Benefit percentage	38.00				Average percentage provided by SRO personnel director.
Rent:					
Square footage / person	303				Current SRO per person average per the facilities administrator.
Rental rate	$8.50				Per signed lease agreements at SRO location.
Utilities:					
Current annual	$5,000				Current SRO average allocation per December 1987 SRO allocation billing report.
Per person	$76				
Southern Regional Office overhead:					
Current monthly	$66,300				Current SRO average allocation per December 1987 SRO allocation billing report.
Current annual	$795,600				
Variable annual portion	$348,552	[1] $5,281			Variable portion of SRO overhead estimated to be 43.81%.

[1] Per person/year.

SCENARIO ONE: AS PRESENTED UNDER PROPOSED FADA CONTRACT

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Beginning NTV—FADA [1]	$1,115,709,185	$948,352,807	669,425,511	$334,712,755	$111,570,918	
Disposition (percent)	15	25	30	20	10	100
Disposition Amount—FADA	$167,356,378	$278,927,296	$334,712,755	$223,141,837	$111,570,918	$1,115,709,185
NIV at year end	$948,352,807	$669,425,511	$334,712,755	$111,570,918	$0	
FADA management fees:						
Management, legal, and accounting fees	$7,740,232	$6,066,69	$3,765,518	$1,673,564	$418,391	$19,664,374
Disposition fee	$1,332,994	$1,851,380	$1,777,325	$1,184,883	$592,442	$6,739,023
Appraisal review fee	$329,134	$279,764	$197,481	$98,740	$32,913	$938,032
Total FADA management cost	$9,402,360	$8,197,813	$5,740,324	$2,957,187	$1,043,746	$27,341,430
Net present value FADA management cost		$21,999,380				
FADA fee annual average (undiscounted)		$5,468,286				
As a percentage of net takeover value		0.49				
As a percentage of net realizable value		0.92				

[1] Net takeover value is the result of a sort of net takeover values for all assets. This sort allocates those assets proposed to be assigned to an outside manager that would be typical of previous receiver contracts and include complex loan workouts and real estate assets where FADA management would maximize value. The remaining assets of $768,661,409 NIV would remain with the receiver.

SCENARIO TWO: INCORPORATE FADA STAFF INTO RECEIVERSHIP

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Beginning NTV	$1,115,709,185	$948,352,807	$669,425,511	$334,712,755	$111,570,918	
Disposition (percent)	15	25	30	20	10	100
Disposition AMT	$167,356,378	$278,927,296	$334,712,755	$223,141,837	$111,570,918	$1,115,709,185
Addition to variable costs:						
Rent	$427,273	$222,793	$157,265	$78,633	$26,211	$732,175
Utilities	$7,273	$6,553	$4,625	$2,313	$771	$21,535
Wages and benefits	$2,863,500	$2,580,014	$1,821,186	$910,593	$303,531	$8,478,824
SRO overhead	$253,493	$228,397	$161,221	$80,611	$26,870	$750,592
Total additional costs	$3,371,538	$3,037,756	$2,144,298	$1,072,149	$357,383	$9,983,124
Net present value in-house management cost		$8,029,626				
Annual average (undiscounted)		$1,996,625				
As a percentage of net takeover value		0.18				
As a percentage of net realizable value		0.34				

SCENARIO ONE VERSUS SCENARIO TWO: DOLLAR COST SAVINGS ANALYSIS

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Scenario one costs	$9,402,360	$8,197,813	$5,740,324	$2,957,187	$1,043,746	$27,341,430
Scenario two costs	3,371,538	3,037,756	2,144,298	1,072,149	357,383	9,983,124
Dollar savings	6,030,822	5,160,057	3,596,026	1,885,038	686,363	17,358,306
Percent value of dollar savings		$13,969,754				
Percentage savings		63.50				

SCENARIO THREE: AS PRESENTED UNDER PROPOSED MANAGEMENT CONTRACT

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Beginning NTV [1]	$1,115,709,185	$948,352,807	$669,425,511	$334,712,755	$111,570,918	
Disposition (percent)	15.00	25.00	30.00	20.00	10.00	100.00
Disposition amt	$167,356,378	$278,927,296	$334,712,755	$223,141,837	$111,570,918	$1,115,709,185
NTV at year end	$948,352,807	$669,425,511	$334,712,755	$111,570,918	$0	
Management fees:						
Management fees	$5,160,155	$4,044,446	$2,510,346	$1,115,709	$278,927	$13,109,583
Disposition fee	1,332,994	1,851,380	1,777,325	1,184,883	592,442	6,739,023
Total management cost	6,493,149	5,895,826	4,287,670	2,300,592	871,369	19,848,606
Net present value management cost			$15,884,350			
Fee annual average (undiscounted)			$3,969,721			
As a percentage of net takeover value			0.36			
As a percentage of net realizable value			0.67			

[1] Net takeover value is the result of a sort of net takeover values for all assets. This sort allocates those assets proposed to be assigned to an outside manager that would be typical of previous receiver contracts and include complex loan workouts and real estate assets where contractor management would maximize value. The remaining assets of $768,661,409 NTV would remain with the receiver.

Scenario Three Assumptions				Assumption Explanations
Discount rate	10.73			Effective yield on FSLIC Recap Bonds.
Inflation rate	6.00			Based on 1987 inflation rate plus inflation expectations.
Management fee basis points	YEAR 1	YEAR 2	YEAR 3 ON	Per proposed asset mgmt contract (Draft 1/22/88).
Management fees	50	50	50	Points on net takeover value.
Disposition fee	150	125	100	Points on Proceeds from sale [(1) Assume 90.0% of Appraised Value]. (1) Based on random sample of asset appraisals/sales.

Salaries & benefits	NUMBER	MONTHLY SALARY	ANNUAL SALARY	ANNUAL BENEFITS	
Asset management staff:					Estimated employee salaries.
Portfolio manager	1	$8,333	$100,000	$38,000	
Senior asset manager	5	6,667	80,000	30,400	
Asset manager	20	3,750	45,000	17,100	
Appraiser	1	6,250	75,000	28,500	
Property manager	2	2,500	30,000	11,400	
Legal	3	5,833	70,000	26,600	
Accounting	2	2,083	25,000	9,500	
Administrative	14	1,667	20,000	7,600	
Total	48	37,083	445,000	169,100	
Benefit percentage	38.00				Average percentage provided by SRO personnel director.
Rent:					
Square footage/person	303				Current SRO per person average per the facilities administrator.
Rental rate	$8.50				Per signed lease agreements at SRO location.
Utilities:					
Current annual	$5,000				Current SRO average allocation per December 1987 SRO allocation billing report.
Per person	$76				
Southern regional office overhead:					
Current monthly	$66,300				Current SRO average allocation per December 1987 SRO allocation billion report.
Current annual	$795,600				
Variable annual portion	$348,552	[1] $5,281			Variable portion of SRO overhead estimated to be 43.81%.

[1] Per person/year.

PERSONAL EXPLANATION

Mr. KASICH. Mr. Speaker, I ask unanimous consent to have my statement appear in the permanent RECORD following the vote on the Bliley amendment on dial-a-porn.

Mr. Speaker, I was on the floor. I cast my vote. The computer did not record my vote. If it had been properly recorded, it would have reflected the fact that I supported and voted in favor of the Bliley amendment.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERSONAL EXPLANATION

Mrs. MORELLA. Mr. Speaker, I ask unanimous consent to have the permanent RECORD show that, had I been here yesterday for one of the votes, which was House Resolution 422, the resolution on the INF Treaty, I would certainly have voted for it. I am in strong support.

Mr. Speaker, I was honored by the National Mother's Committee at that particular time.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

NATIONAL DIGESTIVE DISEASE AWARENESS MONTH

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 421) designating May 1988 as "National Digestive Disease Awareness Month," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, the minority has no objection to this legislation being considered.

Mr. PEPPER. Mr. Speaker, I want to commend my colleagues for joining me in supporting the passage of a bill which designates the month of May as "National Digestive Disease Awareness Month."

The digestive disease system, which includes the esophagus, stomach, intestine, gall bladder, liver, pancreas, and colon, can be affected by a wide range of acute and chronic diseases. In fact, digestive disease represents one of the Nation's most serious health problems in terms of discomfort and pain, personal expenditure for treatment, working hours lost, and mortality.

Sadly, more Americans are hospitalized by digestive diseases than any other diseases, necessitating 25 percent of all surgical operations. It has been estimated that 20 million Americans suffer from chronic digestive diseases, with over 14 million cases of acute digestive disease treated each year. Tragically, at least 100 different digestive diseases, in addition to other disorders of the gastrointestinal tract, cause more than 200,000 deaths every year. It is also one of the most prevalent causes of disability in the work force.

In economic terms, digestive disorders are extremely costly to the American public, and rank third among illnesses in total cost in the United States. Direct personal health care expenditure for treatment of digestive disorders exceeded $17 billion last year. Combined with annual lost wages, taxes, disability, and other financial expenditures, total losses from digestive diseases were estimated at nearly $50 billion last year. Of course, these digestive diseases also take their toll in ways that cannot be measured in dollars.

Fortunately, encouraging progress has been made by researchers through the National Institute of Arthritis, Diabetes, Digestive, and Kidney Diseases, and many victims have been relieved of their discomfort, pain and in extreme cases, death.

The month of May 1988 will mark the fifth anniversary of the National Digestive Disease Education Program, a coordinated effort through the National Institutes of Health to educate the public and the health care community regarding the seriousness of digestive diseases, and to provide information relative to their treatment, prevention, and control. It is expected that this resolution and the subsequent Presidential proclamation will be helpful in calling to the attention of the American people a disease which represents one of the Nation's most serious health problems.

I thank my colleagues for joining with me in this national effort to enhance awareness and efforts to combat digestive diseases.

Mrs. MORELLA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 421

Whereas digestive diseases rank third among illnesses in total economic cost in the United States;

Whereas digestive diseases represent one of the Nation's most serious health problems in terms of discomfort and pain, personal expenditures for treatment, working hours lost, and mortality;

Whereas 20 million Americans suffer from chronic digestive diseases;

Whereas more than 14 million cases of acute digestive diseases are treated in this country each year, including ⅓ of all malignancies and some of the most common acute infections;

Whereas more Americans are hospitalized because of digestive diseases than any other type of disease;

Whereas digestive diseases necessitate 25 percent of all surgical operations;

Whereas digestive diseases are one of the most prevalent causes of disability in the work force;

Whereas, in the United States, digestive diseases cause yearly expenditures of over $17,000,000,000 in direct health care costs and a total annual economic burden of nearly $50,000,000,000;

Whereas more than 100 different digestive diseases, and other disorders of the gastrointestinal tract, each cause more than 200 deaths every year;

Whereas there has been interest on the part of the research community in the causes, cures, prevention, and clinical treatment of digestive diseases and related nutritional problems;

Whereas the people of the United States should recognize prevention and treatment of digestive diseases as a major health priority;

Whereas national organizations, such as the Digestive Diseases National Coalition, are committed to increasing awareness and understanding of digestive diseases in the health care community and among members of the general public;

Whereas the National Institutes of Health, through the National Digestive Diseases Education and Information Clearinghouse and the National Digestive Diseases Advisory Board, is committed to encouraging and coordinating such educational efforts;

Whereas the National Digestive Disease Education Program is a coordinated effort to educate the public and the health care community on the seriousness of digestive diseases and to provide information relative to the treatment, prevention, and control of digestive diseases; and

Whereas May 1988 marks the fourth anniversary of the National Digestive Disease Education Program: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May 1988 is designated as "National Digestive Disease Awareness Month", and the President is authorized and requested to issue a proclamation calling upon all government agencies and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL FISHING WEEK

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 190) to authorize and request the President to issue a proclamation designating June 6-12, 1988, as "National Fishing Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, the minority has no objection to this legislation.

Mr. JONES of North Carolina. Mr. Speaker, today the House has before it my bill House Joint Resolution 432 proclaiming "National Fishing Week" June 6-12, 1988. For several years, we have commemorated the activities of millions of recreational and commercial fishermen.

"National Fishing Week" is a special tribute to a national pastime that benefits us in so many ways. Economically, sport fishing generates revenues exceeding $25 million annually, through tourism, plus sales of equipment and services utilized by the 54 million sport fishermen in this country.

Commercial fishermen also play an important role in the economic picture. As the demand for fish grows steadily in our health conscious society, so does the importance of the commercial fishermen. Approximately 300,000 Americans are employed in this industry, which is extremely critical in small coastal towns.

Additionally, these fishermen realize the necessity of protecting the environment that so enriches their lives. Through continued support, education, and conservation, we can hope to ensure that fishing will remain enjoyable and profitable.

The special events, educational classes, and seminars that occur during "National Fishing Week" serve to recognize and strengthen the sport fishing industry. Therefore, I would hope we can again enjoy celebrating this commemorative week.

Mrs. MORELLA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 190

Whereas the United States Bureau of the Census reported that fifty-four million residents of our country participated in sport fishing in 1980;

Whereas sport fishing is a family oriented, outdoor, recreational activity that provides therapeutic rewards and enjoyment to people of all ages;

Whereas the demands for goods and services by sport fishing participants is estimated to generate $25,000,000,000 in economic activity and employment for an estimated six hundred thousand individuals each year;

Whereas fishing promotes respect for Nation's marine, estuarine, and fresh waters, and their associated plant and animal communities; and

Whereas our country's league of fishing enthusiasts represent a constituency that seeks to prevent the degradation of our Nation's diverse aquatic habitats: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is requested and authorized to issue a proclamation designating June 6-12, 1988, as "National Fishing Week" and calling upon Federal, State, and local governments agencies, and the people of the United States to observe the week with appropriate programs and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

NATIONAL ARBOR DAY

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 247) to authorize the President to proclaim the last Friday of April 1988, as "National Arbor Day," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, the minority has no objection to the legislation.

Mr. ROE. Mr. Speaker, I want first of all to thank Chairman FORD, Mr. DYMALLY, the distinguished chairman of the Subcommittee on the Census and Population and the gentlelady from Maryland, whom I have the pleasure of sitting with on my Science, Space, and Technology Committee, Mrs. MORELLA, for their support on the expedient passage of Senate Joint Resolution 247, the "National Arbor Day." I would like also to commend my fellow sponsors of the House bill, House Joint Resolution 55, for their assistance and attention to this matter.

It was over 100 years ago that the State of Nebraska established the first official Arbor Day observance in America. Today, there are less than a handful of States that do not have an Arbor Day which is observed by schools, service clubs, and civic groups, as well as arboricultural, horticultural, and agricultural groups.

The importance of trees to the environment has never been underestimated. In the ancient world, trees were worshipped as deities, and in some civilizations, a festival celebrating trees was observed. Trees provide a host of important items, from paper to shade to bark, and protect soil from erosion. We have often taken their presence for granted, yet if you have ever seen a desert, you will appreciate even more the appearance of a tree.

Everyday we are reminded that this resource like any other is finite. Man's encroachment on the environment can have serious consequences, through carelessness or accident it can be destroyed. I believe it is very appropriate to honor those who work to make us aware and educate all of us to the vital need to protect and preserve our arboreal resources.

Finally, Mr. Speaker, I would like to commend the Committee for National Arbor Day, and the Honorable Harry J. Banker who publishes the National Arbor Day Review and all the organizations which lent their support for their work to bring this legislation to life and insure that Friday, April 28, National Arbor Day will more than enhance public awareness in name only.

Mrs. MORELLA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 247

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized and requested to issue a proclamation designating the last Friday of April 1988, as "National Arbor Day" and calling upon the people of the United States to observe such a day with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL CHILD ABUSE PREVENTION MONTH

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 246) to designate the month of April 1988, as "National Child Abuse Prevention Month," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, the minority does not object to this legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 246

Whereas the incidence and prevalence of child abuse and neglect have reached alarming proportions in the United States;

Whereas an estimated four million children become victims of child abuse in this Nation each year;

Whereas an estimated five thousand of these children die as a result of such abuse each year;

Whereas the Nation faces a continuing need to support innovative programs to prevent child abuse and assist parents and family members in which child abuse occurs;

Whereas Congress has expressed its commitment to seeking and applying solutions to this problem by enacting the Child Abuse Prevention and Treatment Act of 1974;

Whereas many dedicated individuals and private organizations, including Child Help U.S.A., Parents Anonymous, the National Committee for the Prevention of Child Abuse, the American Humane Association, and other members of the National Child Abuse Coalition, are working to counter the ravages of abuse and neglect and to help child abusers break this destructive pattern of behavior;

Whereas the average cost for a public welfare agency to serve a family through a child abuse program is twenty times greater than self-help programs administered by private organizations;

Whereas organizations such as Parents Anonymous, and other members of the National Child Abuse Coalition, are expediting efforts to prevent child abuse in the next generation through special programs for abused children; and

Whereas it is appropriate to focus the attention of the Nation upon the problem of child abuse: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of April, 1988, is designated as "National Child Abuse Prevention Month", and the President is authorized and requested to issue a proclamation calling upon all Government agencies and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

EXPRESSING GRATITUDE FOR LAW ENFORCEMENT PERSONNEL

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 227) to express gratitude for law enforcement personnel, and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, the minority has no objection to this legislation and, in fact, would support it.

Mr. DERRICK. I rise in support of Senate Joint Resolution 227, a resolution to designate May 1 as "Law Day, USA." Traditionally, this day has been set aside to honor and commemorate the service of our Nation's law enforcement officers. I believe that it is most ap-

propriate that today we join the other body in adopting this resolution.

Law Day salutes the whole realm of law enforcement personnel—policemen, sheriffs and their deputies, troopers, patrolmen, detectives, constables, and other officers. These men and women are devoted to their jobs, tireless in the work and often underpaid for the tasks they perform.

Last year, 60 police officers were killed in the line of duty. Some 64,000 officers were shot, assaulted or injured while doing their job. These are sobering statistics. Let us not take for granted the danger these men and women face each day. They are putting their lives on the line for the safety of the American public.

Mr. Speaker, I would like to thank the gentleman from California, the gentlewoman from Maryland, and the chairman of the Post Office and Civil Service Committee for their efforts in bringing this measure to the floor. As sponsor of the companion bill, House Joint Resolution 506, I urge my colleagues to support this worthwhile resolution.

Mrs. MORELLA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 227

Whereas the first day of May of each year was designated as "Law Day U.S.A." and has been set aside as a special day to advance equality and justice under law; to encourage citizen support both of law enforcement and law observance; and to foster respect for law and to understanding its essential place in the life of every citizen of the United States;

Whereas during the course of each year many law enforcement officers are killed and tens of thousands are injured or assaulted in the course of their duties;

Whereas each day police officers and other law enforcement personnel perform their duties unflinchingly and without hesitation; and

Whereas these dedicated people are devoted to their jobs, underpaid for their efforts, and tireless in their work, performing without adequate recognition: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in celebration of "Law Day U.S.A.", May 1, 1988, special emphasis be given by grateful people to all law enforcement personnel of the United States for the unflinching and devoted service in helping to preserve the domestic tranquility and guaranteeing to all individuals their rights under law.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

WORLD POPULATION AWARENESS WEEK

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 148) to designate the week beginning April 20, 1987, as "World Population Awareness Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, the minority has no objection to this legislation.

Mr. Speaker, I yield to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Speaker, last year we added the 5 billionth living member to the human race. As our population grows, resources shrink. Overpopulation has dramatic and clear effects: rain forests are eliminated, air and water are polluted, urban slums grow and maternal and child health declines in many developing nations.

By designating this week as "World Population Awareness Week," the House joins more than 40 States in declaring this week a time to consider the effects of rapid population growth on the world's health and economy. I hope we can formulate some solutions to the problems.

These problems do not just occur in the Third World. The industrialized nations depend heavily on the developing world for many strategic materials, and U.S. exports to developing nations account for about 1 of every 24 U.S. manufacturing jobs. U.S. farmers depend on developing countries for about 40 percent of their export market. In economic terms, alone, we have a real substantial stake in the health and productivity of all parts of the world.

This resolution simply points out that current rapid population growth is causing many serious problems and that many of them could be ameliorated by increasing access to voluntary family planning. In the past, the United States was a world leader in recognizing the right of people to control the size of their families. I hope that this resolution will cause some people to think about this and other avenues of help available to us.

I'm proud to join the principal sponsor of this bill, Representative JIM MOODY, my colleagues from California and Maryland in supporting House Joint Resolution 148.

Mrs. MORELLA. Mr. Speaker, further reserving the right to object, I would like to compliment the gentleman from Illinois for his eloquence.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 148

Whereas the world population has reached five billion and is growing at the unprecedented rate of eighty-seven million a year;

Whereas 92 per centum of world population growth occurs in the poorest, least developed countries of the world;

Whereas rapid population growth causes or intensifies a wide range of grave problems in the developing world including environmental degradation, urban deterioration, unemployment, malnutrition, hunger, resource depletion, and economic stagnation;

Whereas 50 per centum of the ten million infant deaths and 25 per centum of the five hundred thousand maternal deaths that occur each year in the developing world could be prevented if voluntary child spacing and maternal health programs could be substantially expanded;

Whereas some five hundred million people in the developing world want and need family planning but do not have access or means to such services;

Whereas the United States has been the leading advocate of the universally recognized basic human right of couples to determine the size and spacing of their families;

Whereas in 1986 a total of twenty-five United States Governors proclaimed "World Population Awareness Week" in their States to call attention to the consequences of rapid population growth;

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of April 20, 1987, through April 25, 1987, is designated as "World Population Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities.

AMENDMENT OFFERED BY MR. DYMALLY

Mr. DYMALLY. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DYMALLY: Page 2, line 3, strike "week of April 20, 1987, through April 25, 1987," and insert "week beginning April 17, 1988,".

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from California [Mr. DYMALLY].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment of the joint resolution.

The joint resolution was ordered to be engrossed.

AMENDMENTS TO THE PREAMBLE OFFERED BY MR. DYMALLY

Mr. DYMALLY. Mr. Speaker, I offer amendments to the preamble.

The Clerk read as follows:

Amendments to the preamble offered by Mr. DYMALLY: Page 2, at the end of the penultimate clause insert "and".

Page 2, in the last clause, strike the semicolon at the end and insert ": Now, therefore, be it".

The SPEAKER pro tempore. The question is on the amendments to the preamble offered by the gentleman from California [Mr. DYMALLY].

The amendments to the preamble were agreed to.

The joint resolution was ordered to be read a third time, was read a third time, and passed.

TITLE AMENDMENT OFFERED BY MR. DYMALLY

Mr. DYMALLY. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. DYMALLY: Amend the title so as to read: "To designate the week beginning April 17, 1988, as 'World Population Awareness Week'.".

The title amendment was agreed to.

A motion to reconsider was laid on the table.

□ 1900

OLDER AMERICANS MONTH

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 508), designating May 1988 as "Older Americans Month," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, I rise in support of House Joint Resolution 508 designating May 1988 as "Older Americans Month."

Mr. Speaker, as member of the Select Committee on Aging, it is an honor for me to be a cosponsor of this resolution.

Today we have over 29 million 831 thousand Americans who are over the age of 65 in comparison with 19,972,000 in 1970. In the 25-year span from 1960 to 1985, there was an increase of 11.8 percent in the over 65 population.

As the number of older Americans increases, we are reminded of their invaluable contributions to our society. They are an untapped resource for our younger generations—their experience and contributions to our Nation help to build up our own unique American heritage and culture.

Older Americans continue to contribute; many significant achievements are made by older Americans—Cecil B. De Mille produced and directed The Greatest Show on Earth when he was 71 years old, and The Ten Commandments when he was 75. Frank Lloyd Wright created his most known works at the age of 69. Grandma Moses started to paint after she was 78. Margaret Mead made a field trip to New Guinea at 72. Golda Meir, formerly of Milwaukee, WI, became Prime Minister of Israel at age 70. Benjamin Franklin started to draft the Declaration of Independence at the age of 70 and was 84 when he appealed to Congress to abolish slavery. Maggie Kuhn was 64 when she began organizing the Gray Panthers, and the list goes on.

I am pleased that there are over 220 cosponsors of House Joint Resolution 508. This bill helps us to focus on the needs, concerns, of older Americans, in addition to recognizing their contributions.

Mr. McCOLLUM. Mr. Speaker, today I call upon my colleagues to join with me to appreciate, to preserve, to recognize maybe our greatest natural resource, our elder Americans, by designating, for the seventh year in a row, May as "Older Americans Month."

We can speak of their many contributions to society, as workers, as parents, as politicians, as dreamers. However, the essence of what we treasure in our elders is somewhat more intangible. Their very presence among us calls us back to ourselves.

In the hustle and bustle of daily living we can easily miss what is most important in life. In the depth and breadth of life experience we can observe a certain serenity in our elders, a sense that even with the great complexity of life they have learned acceptance.

T.S. Eliot speaks of life's complexity. He says:

Home is where one starts from. As we grow older—the world becomes stranger, the pattern more complicated—Of dead and living. Not the intense moment Isolated, with no before and after, But a lifetime burning in every moment—And not the lifetime of one man only—But of old stones that cannot be deciphered.

It is true that our search into another generation will be somewhat limited; however, by affirming the dignity of our elders in this way today, we take a first step in deciphering the great mysteries which are theirs to share and ours to explore.

This is why I sponsor legislation each year to set aside the month of May to honor senior citizens. House Joint Resolution 508 which the House adopted today is this year's measure.

Mrs. MORELLA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 508

Whereas older Americans have contributed many years of service to their families, their communities, and the Nation;

Whereas the population of the United States is comprised of a large percentage of older Americans representing a wealth of knowledge and experience;

Whereas older Americans should be acknowledged for the contributions they continue to make to their communities and the Nation; and

Whereas many States and communities acknowledge older Americans during the month of May: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in recognition of the traditional designation of the month of May as "Older Americans Month" and the repeated expression by the Congress of its appreciation and respect for the achievements of older Americans and its desire that these Americans continue to play an active role in the life of the Nation, the President is directed to issue a proclamation designating the month of May 1988 as "Older Americans Month" and calling on the people of the Untied States to observe this month with appropriate programs, ceremonies, and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that all Members may have legislative days in which to revise and extend their remarks on the several joint resolutions just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The Speaker pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC,
April 18, 1988.

Hon. JIM WRIGHT,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I have previously notified you of the receipt of a subpoena in my office issued by the Superior Court of the District of Columbia.

After consultation with my General Counsel, pursuant to Rule L(50) of the Rules of the House of Representatives, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House

With great respect, I am,

Sincerely yours,

DONNALD K. ANDERSON,
Clerk, House of Representatives.

UAB VITAL TO STATE AND NATION

(Mr. ERDREICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ERDREICH. Mr. Speaker, once again, the importance of the University of Alabama at Birmingham to Jefferson County, AL, the entire State of Alabama, and indeed, our Nation, has been underscored.

UAB's many contributions to our local community and State were highlighted in the annual report issued recently by university President Charles McCallum. McCallum noted that in 1987, UAB employed almost 12,000 faculty and support staff. These employees received a payroll of $235 million, part of a $461 million total operating budget. These dollars, channeled back

into our community, are a tremendous boost to our local economy.

UAB is also a strong supporter of small business development throughout the State, and continues to provide high-quality medical treatment and conduct research activities at its world-renowned medical center.

In 1987, the graduate and undergraduate facilities of UAB provided a well-rounded education for over 14,000 students, and through its medical care, research, and education activities, the university is helping our county, State, and Nation prepare tomorrow's leaders for the challenges of the 21st century.

The University of Alabama at Birmingham continues to be a sparkplug of economic and jobs growth in Jefferson County, and all of us are proud of the university's continued accomplishments. I congratulate the leadership of UAB, President Charles McCallum, and the staff and faculty of the university, on their continued good work.

Following is an editorial by the Birmingham News saluting the University of Alabama for another successful year:

[From the Birmingham News, Mar. 19, 1988]

UAB'S IMPACT

The vital role that the University of Alabama at Birmingham plays in our local economy was spelled out this week in President Charles McCallum's annual report.

In 1987, almost 12,000 employees received a payroll of about $235 million dollars, most of which found its way into the local economy. It is hard to overstate the importance of that payroll in supporting Birmingham businesses as UAB employees buy homes, cars, food and other products.

That payroll is part of a $461 million operating budget, of which state appropriations provide only $126 million.

The taxpayers are getting a bargain.

That payroll, though, is just one way in which UAB uplifts this community. Projects that directly help the local economy include the university's support for the Office for the Advancement of Developing Industries and the Alabama Small Business Development Consortium. The OADI's business-incubator facility has helped 13 advanced-technology businesses begin operations that now employ 85 people and have combined budgets in excess of $4 million a year.

Research continues to be an important part of UAB's mission, with research funding putting the university among the top 50 in the nation in the amount of federal money received.

Faculty and staff members cared for 29,856 patients admitted to the University Hospital last year and 34,000 people who came to the Medical Center's emergency department.

UAB's main job, though, is education. McCallum reports that UAB had 14,245 students in 1987 and awarded 2,090 degrees, 41 of which were doctoral degrees.

While most of us in Birmingham are aware of UAB's importance to the community, McCallum's report helps put specific numbers to its economic and educational impact.

We salute UAB for another successful year.

FAIR HOUSING BILL

The SPEAKER pro tempore (Mr. KLECZKA). Under a previous order of the House, the gentleman from Illinois [Mr. MICHEL] is recognized for 5 minutes.

Mr. MICHEL. Mr. Speaker, today I am introducing, by request, the administration's fair housing bill. The President, in every message accompanying a State of the Union Address, has aked Congress for effective and substantive action on fair housing civil rights protection. Now is the time for such action.

When we debate this bill, we will be able to examine all of its ramifications. But for now, I simply want to emphasize the fact that, in my view, this is a fair bill, a necessary bill, and a timely bill.

It is a fair bill because it is in the great tradition of the 1968 fair housing bill, for which I voted exactly 20 years ago this month, and which is now current law. I am proud of my civil rights record going back more than 32 years. I believe the administration's fair housing bill reflects the same concern for human and civil rights that has long been at the very heart of the American commitment to equality.

Under the provisions of the administration's bill, the Department of Housing and Urban Development could obtain an injunction while investigating charges of noncompliance, Department of Justice enforcement would be expanded to cover all cases, and private parties could get effective punitive damages and attorney's fees.

Current fair housing law does not prohibit discrimination against the handicapped. The administration's bill embraces the handicapped within the umbrella of fair housing protection. This concern for the rights and needs of the handicapped is one of the most welcome ideas to come along in my time in Congress and I'm glad this bill is responsive to those needs.

I am introducing the administration's bill today so that its provisions can be inserted into the ongoing discussion of fair housing reform. Our goal must be to develop effective legislation that can become law in the 100th Congress, and I believe the President's bill can serve as a realistic basis for the desperately needed improvement in our Federal fair housing laws.

THE B-1B IS FLYING AGAIN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. STRATTON] is recognized for 5 minutes.

Mr. STRATTON. Mr. Speaker, the distinguished chairman of the Armed Services Committee has over the past several weeks shared with the House his views on the strategic programs the Armed Services Committee reviewed last year. These programs, the MX, Midgetman, Trident II, B-1B, and ATB represent this Nation's investment in strategic deterrence. They are all very costly and very complex programs which will serve to ensure America's freedom from attack into the next century.

Given the critical importance of these programs, it is understandable and beneficial that the chairman and entire membership of the Armed Services Committee have taken a very close look at each system. As chairman of the Procurement Subcommittee, I have been intimately involved with the examination of these strategic programs and support HASC oversight in such areas.

As in all areas under our jurisdiction, it is the function of the HASC to monitor DOD programs to ensure that the U.S. taxpayer is getting the most he or she can for the money invested. This is an important responsibility that the chairman and members of the committee take very seriously.

With that said, it is also important for us to communicate in a fair manner the results of our findings. Strategic weapons systems are by design very complex and it is incumbent upon those who understand them to provide a clear picture of their cost and of their worth to the American public. Regrettably, recent accounts of the B-1B bomber have missed the fairness standard.

While the program has received high marks for cost and schedule some have argued that the B-1B fails the performance test due to problems with its ECM system. As with so many things, performance is in the eyes of the beholder and one can view the glass as eight-tenths full or two-tenths empty. The B-1B strategic bomber program represents a bipartisan cooperative effort to address an acknowledged shortcoming in the bomber leg of our nuclear triad. In 1982, the Reagan administration requested funding for the program and received congressional support and the authorization for multiyear procurement.

Some 6 years later, the Air Force has taken delivery of 98 aircraft with the 100th to be delivered the end of this month—2 months ahead of schedule. Ahead of schedule and within the congressional mandated cost cap, the B-1B is capable of holding at risk any enemy that would threaten our Nation.

While it is true that the B-1B has experienced problems, especially with its electronic countermeasures system [ECM], the plane, as a function of its speed, altitude and small radar cross section, can penetrate and fulfill its mission. While the Soviet defenses against penetrating bombers will continue to improve, the B-1B can also be improved to meet these additional threats and remain capable.

In short, the B-1B is and worth the considerable resources invested in its development and deployment. As with all modern weapons systems, we must maintain its capabilities in a changing world through practical and cost effective enhancements. It is now time to

ensure that the proper ameliorative steps are being taken and to build on the considerable inherent capabilities of the B-1B. The American public must understand that this Nation possesses a meaningful nuclear deterrent and that the Congress will work to maintain that force.

THE LEFTWING MACHINE AND THE HOUSE RULES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 5 minutes.

Mr. GINGRICH. Mr. Speaker, I have here, so Members who might be watching on television can see it, the conference report on the trade bill in its current form. It is unbound, it is not available. This I am told is the only copy available on our side of the aisle. I presume it will be available sometime tomorrow morning. It runs to I guess a thousand pages.

The point I want to make to my colleagues is when they look at all of this, there is a rule in the House which says this should lay over for 3 days so that every Member, every interest group, every news media person would have a chance to read it. We will see it at most for 6 hours. We will break the traditional rule of the House. We often do.

But I want to take this evening to make two points. First, every Member who said about the continuing resolution they did not know there was $8 million for a religious school in France, they did not know there was an amendment to kill two newspapers, they did not know this, they did not know that, once again tomorrow, because of the way the House is being railroaded by the leftwing machine which dominates it, we will vote in ignorance, and those who vote yes will in fact not know. It will be impossible to have read it before we vote.

But it makes a larger point which I think Republicans in particular must pay attention to. The leftwing machine, which runs this House, uses the rule to its own advantage when it wants to and suspends the rules when it is to its advantage to suspend them. If it does not want a 3-day layover, we do not get a 3-day layover. If it does not care about germaneness, germaneness is waived. If it does not care about the Budget Act, the Budget Act is waived. If it is inconvenient to go to the committee, we go straight to the Rules Committee and come to the floor without ever having been to the committee.

I say all of that because the American people are being cheated by a process in which only the left redefines the rules routinely, and process becomes substance as the views and the desires of the American people are ignored.

It is my hope that from here on, for as long as the left ignores the true rules, and simply writes its own, that the Republicans will decide it is our job to represent the American people, to insist that procedure is substance, to argue for rules and to fight for rules as we did yesterday on telephone pornography where we successfully fought the rule. We won that fight and we changed the procedure so the American people could have a fair vote.

I can imagine in the near future votes on balanced budget amendments, I can imagine votes on enforcing drug laws, I can imagine votes on bringing to the House all of the various provisions for fair employment, for minimum wage, for equal opportunity which currently apply to business but do not apply to the legislature.

I think it is the job of the Republican minority to recognize that only by approaching the rules the same way as the leftwing majority, only by insisting on our right to make sure that the American people get a vote can we match the left's determination to ensure whatever happens it maximizes its allies' chances to dominate, even if that means suspending the rules of the House.

So tomorrow as we vote without a 3-day layover, as we look at a thousand pages of a trade bill being brought to the floor on 6 hours, not 3 days notice, I think every Member should recognize we have an obligation to ensure that the American people have their views and their opinions heard and have their views and their opinions voted on, and I think that will make some rules votes and some procedural votes over the next months far more important back home than they have been in our lifetime.

GENERAL CARLO ALBERTO DALLA CHIESA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. RODINO] is recognized for 5 minutes.

Mr. RODINO. Mr. Speaker, even more threatening to world stability than Middle East inspired terrorism are the insidious problems of the illegal narcotics traffic which permeates all corners of the world.

I have been able to observe the important cooperation of, and contributions made by, the Italian Government in combating this heinous criminal activity.

The Italian national antidrug agency estimates that Sicily is one of the world's largest heroin suppliers with an annual turnover of $30 billion.

In its continuing fight against this serious problem, the Italian Government in 1982 assigned one of its top police officials, Gen. Carlo Alberto Dalla Chiesa of the Carabinieri, to Palermo, Sicily, to direct the fight.

Tragically, Gen. Dalla Chiesa and his wife, Emmanuela were assassinated in the center of Palermo while under police escort on September 3, 1982—4 short months after taking up this important assignment.

Dalla Chiesa had come to Palermo as prefect, the top administrative official in the Province of Palermo, to crack down on drug traffickers, as well as other terrorist activities. Palermo, generally considered to be a center of organized crime, is one of the key transit points in the worldwide heroin trade.

While this occurrence was indeed tragic and totally barbaric, Dalla Chiesa and his wife may not have died in vain. His successor, Emmanuele de Francisco, immediately received the broad powers sought by Dalla Chiesa to fight crime and terrorism. The new commissioner was empowered to intercept telephone calls of suspects and given access to all relevant information held by the Prime Minister's secret-service organization. In addition, bank secrecy rules were relaxed and public disclosure was ordered concerning ownership of companies bidding on public works contracts, many known to be affiliated with crime groups.

Gen. Dalla Chiesa was known for his efficiency and dedication. He attained national prominence after directing a string of successful antiterrorist raids, including the rescue of U.S. Gen. James L. Dozier.

In paying tribute to the assassinated general, Prime Minister Giovanni Spadolini referred to the "highest contribution" that the general had made in the antiterrorist struggle, and that "he died at a moment at which, with intelligence and courage, he was putting into action a battle plan against criminal terrorism."

Dalla Chiesa came from a large family with a long military tradition. He was chosen to head the antiterrorist campaign in Italy in 1978. He was later named the head of the Carabinieri in northern Italy until his nomination as deputy commander of this national police force. This was the position he held when the Prime Minister called upon him to go to Palermo and take matters in hand.

Although Gen. Dalla Chiesa only served 4 short months in that post, his name has become synonymous with the fight against terrorism and crime. The new measures adopted by the Government to combat terrorism are the legancy of Gen. Dalla Chiesa and his wife's ultimate sacrifice.

In a land of historic national heroes, many of whom are internationally recognized and honored, there are those whose deeds are just as meritorious but who do not attain this universal acclaim.

Gen. Carlo Alberto Dalla Chiesa is truly an Italian national hero. His life was given on behalf of suppressing criminal and political terrorism in a turbulent region in Italy.

In a recent visit to Rome, I had the pleasure of meeting with Gen. Dalla Chiesa's brother, Romeo, chairman of the Bank of Rome, who in the fine tradition of his brother continues to be deeply involved in the fight against drug abuse in Italy. I conveyed to him the sincere recognition and deep respect the American people have for his brother's dedication to his mission.

Even though his name may not reach the annals of history, the Italian people and those of us who care about the values of life should remember Carlo Alberto Dalla Chiesa whose

example should serve as an inspiration to all of us who are engaged in the continuing battle against the international trafficking in drugs.

GREEN TEA AND DIRTY TRICKS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

Mrs. BENTLEY. Mr. Speaker, I did not realize the gentleman from Georgia [Mr. GINGRICH] was going to talk about the trade bill. I am going to do a general discussion, as I have for a number of days, on Japan and trade. But I did have some parliamentary comments to make about my concern that there is no complete copy of the trade bill available because my office has been trying for about 6 or 8 hours now today to get a copy of that section of the bill which deals with those who violate our military secrets. As I said, as of an hour ago when I checked with them, they still had not been able to get a copy of that, and yet we see in the Los Angeles paper this week an article where the gentleman from Minnesota, Mr. BILL FRENZEL, the leading person on the Committee on Ways and Means from the Republican side, was not even able to get a copy of the Senate document on the trade bill until it was sent to him by a lobbyist via the Japanese Embassy. I think that is really shocking that the members of the Japanese Embassy can get our documents, documents from the Congress of the United States, faster than our own House Members can receive them.

□ 1915

I asked Mr. FRENZEL about that today and he said yes, that is the way he had gotten it. And he found out that other lobbyists had as well, that the Japanese Embassy had distributed to them.

I think it is about time that we really began worrying about the Members here on Capitol Hill more than we worry about the Japanese Embassy. That disturbs me no end.

It also disturbs me that we are getting back the kind of conference report to vote on tomorrow on trade that we are. Ever since I have been in Congress I have been calling for a strong trade bill, one that really espoused fair trade, not the free trade that has resulted in exporting so many of our manufacturing jobs as they have. But the conference report that is coming back is far different than what we voted out here in this House last summer. We voted out a good trade bill; it was unacceptable. I would have even made that a little stronger. But the one that is coming back to us now, from what I understand—and again we do not have copies, we have not been able to read it—is so watered down that most sections of it are almost meaningless. I hope it is not just a Christmas tree assortment of things that people are trying to tie to trade and get it out there and say, "We passed a trade bill."

With all of this concerning trade, I am very, very concerned when I see what is happening to this country as we continue to drown ourselves in imports or allow ourselves to be drowned in imports with the dollars used to pay for those commodities coming into this country coming back to buy up America's assets and to place U.S. real estate out of the reach of most Americans.

That is what is happening.

Just this past weekend we pulled several articles out of the newspaper along that line. Here is one from the Sunday Sun. It reported an official from the Bank of America who had made a study, his investment real estate group had made a study. And he released points in that study which said that the Japanese bought a record 12.7 billion dollars' worth of United States property last year alone, an increase of 70 percent over 1986. The study was presented at a conference at the University of Southern California last week and it was conducted by Kenneth Leventhal & Co., an accounting and consulting firm. That was the highest estimate of Japanese holdings in the United States provided in a documented report.

The figure means, the story goes on, that the Japanese may be the largest foreign holders of United States real estate.

Now you may say, well "is that all bad?" But let us see what is happening with the price of real estate while that is happening.

In another article in Parade magazine on Sunday there is a journalist friend of the writer who had some land in the Kahala area of Honolulu. She said recently she was offered $3 million for her home which is exactly $2.8 million more than she paid for it. In other words, she paid $200,000 for it some time ago. Now she is being offered $3 million.

She turned that offer down because she said, "I'm sure the Japanese will up the price." They can up their price because, again, they have our dollars, the dollars we are sending over there to buy their goods, their exports which are flooding our markets.

The journalist's friend in Hawaii said that in Honolulu alone, in Hawaii alone in the last 2 years the Japanese investors have spent at least $6.5 billion buying up, to quote her, "virtually anything in Hawaii that isn't nailed down." They are purchasing hotels, restaurants, shopping centers, housing tracts, office buildings and land of every stripe, "you name it and they'll buy it," her friend reports, "and at top price too".

Why are the Japanese on a buying kick? Compared to their yen our dollar is the cheapest it has been in a long time. Moreover, they like Hawaii and its people, about 25 percent of whom are of Nipponese descent.

In another article it points out that one of Japan's wealthiest men has added to his extensive real estate holdings in Hawaii by paying a record $38 million to acquire 5½ acres of the Kaiser estate. They are running the prices up, sky high, high, high, sky high.

In a third article in the Sunday Sun, which edition was full of articles about Japanese buying our land, it said they are now buying up New York's most prestigious highrises and luxury condominiums as the yen's doubled buying power allows them to live out their dreams.

There are 80 Japanese buyers who paid $300,000 to $500,000 each for apartments at the Central Park Place project. Others who are paying $800,000 to $900,000 in a 39-story building that is going up.

Once again, you know, the real estate people may say, "What are you objecting to? It is money coming in."

True, money is coming in. But other than their paying property taxes on that, the profit that they get from shopping centers, from hotels, and others is not contributing to the tax base of this country.

The initial article out of the Sunday Sun concerning the Bank of America study points out that not all real estate transactions are even included. They have such financing of development projects which could reach as high, if they get all the figures in, as $20 billion being spent in this country in 1987.

Then in the Monday morning Sun paper there was an article where the Japanese have started to purchase shopping centers in Maryland. So on and on it goes.

Once again, I want to point out that my concern is that these items are being priced out of the market as far as Americans are concerned.

I yield to the gentleman from Pennsylvania [Mr. GAYDOS].

Mr. GAYDOS. I thank the gentlewoman for yielding.

Mr. Speaker, at this time I want to again commend the gentlewoman for taking out special orders and keeping this House apprised of what is happening, bringing them up to date. I think it is a yeoman job. One thing my colleague who is serving on the steel caucus with me and with JOHN MURTHA and other Members in the House, we always appreciate the gentlewoman's dedication to whatever she has done.

Let me say this: After these special orders are concluded the Pennsylvania delegation is going to honor one of our

colleagues who died roughly 10 days ago, John Dent from western Pennsylvania.

As I sit here listening to my colleague from Maryland talking about what the Japanese have accomplished already, what they are going to do in the future and the devastation that they have wreaked upon this country as far as international trade and the invasion of our economic power structure in this country and our economic activities that we have had over the years, it seems to me it is just the same thing as what he said some 30 years ago in the House. When I came here in 1968 I remember standing here as a freshman and he was saying exactly, and predicting exactly, what the gentlewoman is talking about now.

Mrs. BENTLEY. And it is taking place now.

Mr. GAYDOS. Exactly right. And we are going to talk more about what his vision was in some detail. I want to commend my colleague for the great work and her dedication, as I mentioned previously, as to what she has done and what we can expect in the future. I want to state at this time unequivocally that I wish her constituency returns her again, time after time because she is a valuable adjunct to the steel caucus.

Mrs. BENTLEY. I thank the gentleman from Pennsylvania for those very kind remarks and commend him also for being on the alert and pointing out to the American people what is happening in the steel industry and other industries as we are flooded by the imports.

I thank the gentleman.

Over recent weeks, Mr. Speaker, I have been reading some chapters out of the book "The Japanese Conspiracy," small sections of it, about the industries that have been destroyed in the United States by the conspiracy of the Japanese Government and their industries.

We have already discussed the typewriter industry, the television receiving sets, roller chain, carbon steel plate, large power transformers, pipe, and tubing. I will go on tonight to start a little bit on the computer memory disk.

But first I yield to the gentleman from Pennsylvania, Mr. MURTHA.

Mr. MURTHA. I want to join Chairman GAYDOS in commending the gentlewoman from Maryland for the tremendous job she has done in the steel caucus. She is the backbone of the steel caucus and all the things we have been able to do. We certainly appreciate her efforts and her comments here tonight.

Everything she has said has been so appropriate for the working men and women in western Pennsylvania, in Maryland, all the areas which have been so hard hit by these foreign imports.

We appreciate the gentlewoman's work and her comments and especially what she has done for steel in this nation.

Mrs. BENTLEY. I thank the gentleman from Pennsylvania for those kind remarks. I want to say that the two gentlemen from Pennsylvania, like myself, feel very strongly about the attacks; we protest the attacks that people have made that it is our labor market that has destroyed our industry when we know better. We know it was a lot more than that. And when we realize, as has been pointed out in this book, that it was a conspiracy, a foreign government together with their industries, to target each one of ours and to destroy them.

We are there and I am happy to work with the two gentlemen from Pennsylvania in trying to inform the American people on this to see what we can do together. They have been real stalwarts on this. Certainly without them and the leadership they have shown in the steel caucus we would not have the voluntary restraint agreements which have preserved the steel industry to the extent it has today. I am happy to learn this morning that our steel industry is now thriving at 92 percent, which is excellent that they are producing that much. Unfortunately, we do not see the other figures about how much of the steel industry we had to let go before we could get to that point. But at least we are working there and that is to the credit of the steel caucus which has done that.

Mr. Speaker, rather than delay their discussion tonight with bringing up anymore in the book, "The Japanese Conspiracy," I will yield back my time and I will pick up tomorrow night or next week.

Once again, the whole purpose of this discussion is to inform the American people about what is happening.

Mr. Speaker, I therefore yield back the balance of my time but before that I ask unanimous consent to have all of the articles that I referred to included in the RECORD at this time.

The articles referred to are as follows:

[From the Los Angeles Times, Mar. 19, 1988]

JAPAN ALSO HAS AN ADVANTAGE IN THE SENATE

WASHINGTON.—Japanese officials were sitting in their embassy studying a major Senate trade document while House members were forced to wait hours to get their copies, an influential lawmaker complained Thursday.

An irate Rep. William Frenzel, R-Minn., told a closed-door caucus of House trade lawmakers he finally obtained a copy of the paper by messenger from the Japanese as a courtesy. It arrived three hours before the copy from the Senate came.

Frenzel's remarks to House members of a conference committee drafting a sweeping trade bill were confirmed by his administrative assistant, Pat Eveland.

"We think it would be nice if the Senate would decide to give us the trade offer first before the private sector and the press," she said when asked what Frenzel told the caucus. The congressman himself was not available to discuss the matter.

The document was a compromise offer from Senate members of the conference committee. It was designed to resolve conflicts between House and Senate versions of the 1,000-page trade bill, primarily sections dealing with unfair practices by the Japanese and other trading partners.

Eveland said she was on the telephone with a Japanese Embassy official early Wednesday morning discussing the Senate's offer, when to her surprise "it became evident that they had a copy of it."

Just how the Japanese managed to obtain the offer remained unclear, Eveland said. Several copies were distributed to reporters who worked late in the Senate Press Gallery Tuesday night.

[From the San Francisco Sunday Sun, Apr. 18, 1988]

U.S. REAL ESTATE STILL ATTRACTING TOKYO INVESTORS

SAN FRANCISCO (Reuters).—While Japanese investors will continue their U.S. property-buying spree this year, they are becoming more cautious due to global economic concerns and politics, Bank of America believes.

"At minimum, we expect Japanese investment to be equal to or slightly below 1987 levels," Jack Cooper, managing director of Bank of America's Investment Real Estate Group, said in a statement. Bank of America is owned by San Francisco-based BankAmerica Corp., the nation's third-largest bank holding company.

His remarks follow the release of a study that estimated the Japanese bought a record $12.7 billion worth of U.S. property last year, an increase of 70 percent over 1986. The study, presented at a conference at the University of Southern California Wednesday, was conducted by Kenneth Leventhal & Co., an accounting and consulting firm.

This was the highest estimate of Japanese holdings in the United States provided in a documented report. The figure means that the Japanese may be the largest foreign holders of U.S. real estate.

Real estate industry sources noted that the consulting firm's estimate did not cover all real estate transactions. Including all types of investment, such as financing of development projects, a total Japanese investment in U.S. real estate could be as high as $20 billion in 1987, the sources said.

Mr. Cooper said that if the global economic and political issues improve, the Japanese investment this year could be substantially higher than last year.

[FROM THE NEW YORK SUNDAY SUN, APR. 18, 1988]

WEALTHY JAPANESE FLOCK TO BUY MANHATTAN'S MOST EXPENSIVE REAL ESTATE

NEW YORK (Reuters).—Japan's ???? riches are moving into New York's most prestigious high-rise and luxury condominiums as the yen's doubled buying power allows them to live out their dreams.

"The Japanese are buying more and making more inquiries," said Hiroko Suzuki marketing director at the Metropolitan Tower, a luxury apartment house in midtown Manhattan.

"They flock to midtown. They eye high-rise condos with good views" and calculate the appreciation of such an investment over the long term. Ms. Suzuki said.

Luxury condos such as Trump Tower, Trump Parc and Metropolitan Tower are their favorites, said Takeshi Furumoto president of Furumoto Realty Inc.

New York-based real estate agents selling to the Japanese say the October stock-market crash did not dampen the Japanese appetite for prime properties in the United States.

Indeed, the Tokyo market recovered faster than any other.

The Japanese are not the only buyers on the market, real estate agents said.

Many American, European and Hong Kong investors are snapping up expensive condos costing more than $1 million, in part because Manhattan real estate prices proved to be solid investments after the October collapse.

But the Japanese have an added advantage. "Because of the yen's strength, New York apartments must look cheap to them." Ms. Suzuki said.

Since September 1985, the dollar has plummeted from 242 yen to less than 130 yen, slashing U.S. prices for Japanese buyers.

Ms. Suzuki said Japanese buyers easily put out between $1 million and $1.5 million for a tiny apartment with a Central Park view.

Manhattan apartment prices may sound astronomical to other Americans.

But the same money fetches even less in Tokyo, where the price of land soared 68.6 percent last year after rising 21.5 percent the year before.

Fumio Sato of Haseko Realty Inc. has a client who recently purchased an apartment at 100 U.N. Plaza, an elegant address. "She will use it only three or four times a year when she comes for holidays," Mr. Sato said. "It's extravagant, but she likes New York."

A Japanese-language magazine was created recently to help sell American properties to rich Japanese.

About 20,000 copies of the first issue of the quarterly magazine Worldwide were mailed directly to Japanese investors. 50,000 were sold from bookstores in big Japanese cities and 5,000 were sold in New York.

"Nowadays, Japanese clients know New York very well. Sometimes they know more than I know," said Mr. Sato.

In its second issue, due out in May, Worldwide will feature detailed maps of New York and photos of the city designed to entice investors more than 8,000 miles away, said Bill Levine, sales manager of the magazine.

The Japanese demand for New York real estate is expected to keep growing as long as Japan's economy grows stronger and stronger, making Japanese investors increasingly wealthy.

The 55-story Central Park Place project, being built by Japan's Kumagai Gumi Co. Ltd., has lined up 80 Japanese buyers who paid $300,000 to $500,000 for each apartment.

A salesman for Kumagai Gumi said the company also is finding Japanese buyers for apartments at its Worldwide Plaza on the western edge of midtown.

The apartment house is scheduled to be completed before the end of the year.

An apartment at the 39-story building with a good view will cost $800,000 to $900,000, the salesman said.

"Expensive condominiums are attracting the Japanese as their prices are expected to rise in the future," he said.

"The Japanese believe in the proverb, 'Don't be penny-wise amd pound-foolish.'"

[From the Honolulu Sunday Sun, Apr. 17, 1988]

JAPANESE INVESTOR ADDS TO HOLDINGS OF HAWAIIAN LAND

HONOLULU (AP).—One of Japan's wealthiest men has added to his extensive real estate holdings in Hawaii by paying a record $38 million to acquire the remaining 5.5 acres of the Kaiser estate, according to his attorney.

Billionaire Genshiro Kawamoto paid $4.5 million earlier this year to purchase the estate's "picnic house" property and pickup an option to buy the rest of the estate built by industrialist Henry Kaiser.

When another interested buyer offered $38 million, Mr. Kawamoto exercised his option, according to his attorney, Robert J. Lombardi.

Real estate agency Scully Rogers, broker for the sale, and appraiser Robert Hastings said the purchase price was the highest ever paid for a residential property in Hawaii.

The previous record of $21 million was set in March, also by a Japanese buyer.

Hawaii has drawn more Japanese property investment than any other state, including an estimated $3 billion since 1986, and the increasing Japanese appetite has sparked controversy recently.

Honolulu Mayor Frank Fasi last month proposed state legislation to prohibit the sale of residential, agricultural or preservation property to anyone who is not a U.S. citizen, has no plans to become a citizen or would not live on the land at least half of each year. The proposal has little chance of being considered by the legislature this year because it was submitted late in the session.

Mr. Kawamoto has spent an additional $36.9 million to buy 130 acres of land and 142 houses and condominiums on Oahu, the island on which Honolulu is situated.

He said last week that he planned to use the estate, sold by a trust for the Goldman family, as a vacation home when he is in Hawaii on monthly trips from Japan.

The picnic house purchase included nearly 2 acres of land and a boat harbor. The latest purchase includes two houses and an Olympic-sized swimming pool.

"To go through them is like a James Bond movie," Mr. Rogers said. "You lost track of the amenities because you are so in awe of them."

[From Parade Magazine, Apr. 17, 1988]

BUYING PARADISE

A journalist friend of ours who lives in the Kahala area of Honolulu recently was offered $3 million for her home, which is exactly $2.8 million more than she paid for it. She declined the offer. Her reason: "I'm sure the Japanese will up the price."

In the last two years, she says, Japanese investors have spent at least $6.5 billion buying up "virtually anything in Hawaii that isn't nailed down." They are purchasing hotels, restaurants, shopping centers, housing tracts, office buildings and land of every stripe. "You name it, and they'll buy it," our friend reports, "and at top price too."

Why are the Japanese on a buying kick? Compared to their yen, our dollar is the cheapest it has been in a long time. Moreover, they like Hawaii and its people, about 25% of whom are of Nipponese descent. They find the Aloha ambience romantic and exotic and have made Hawaii one of their favorite vacation venues. Despite what they are paying for island property, they are convinced that, come 1993 or so, they will be able to charge Japanese tourists $300 a night and up for hotel rooms, most of which they already own.

Once dependent on pineapples, sugar and the U.S. military for its sustenance and growth, Hawaii rapidly is developing into one of Japan's leading economic outposts. Our friend predicts, "It's just a question of time before Hawaii goes bilingual."

LEGISLATION DEALING WITH SERIOUS PROBLEMS OF UNEMPLOYMENT AND EMPLOYMENT DISCRIMINATION IN NORTHERN IRELAND

The SPEAKER pro tempore. (Mr. KLECZKA). Under a previous order of the House, the gentleman from Massachusetts [Mr. DONNELLY] is recognized for 60 minutes.

GENERAL LEAVE

Mr. DONNELLY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. DONNELLY. Mr. Speaker, I am introducing legislation today, along with Representatives MCGRATH, COYNE, and KENNELLY, and a bipartisan group of members of the Committee on Ways and Means to deal with the serious problems of unemployment and employment discrimination in Northern Ireland.

Mr. Speaker, on September 19, 1986, President Reagan signed the Anglo-Irish Agreement Support Act, which provided $120 million in contributions to an international fund for economic development projects in Northern Ireland and some border counties in southern Ireland. This legislation was a strong show of support and commitment of U.S. support for the Anglo-Irish agreement, signed on November 15, 1985 between the British Government and Ireland.

Shortly after this legislation was enacted, The Economist magazine said about the Anglo-Irish agreement that "achievements have been modest. The most that can be hoped for is that it will buy breathing space, in which (the people of Ireland) may at last see that their interest lies in learning to live with each other."

Although I am not as pessimistic as The Economist as to the effects of the agreement, I do believe more needs to be done to encourage employment in Northern Ireland. In that spirit, we introduced this legislation today.

Our purpose is to provide a constructive response to the dual problems of

unemployment and employment discrimination—problems that are inextricably linked.

This legislation is an incentive measure, designed to encourage U.S. firms to locate in Northern Ireland and designed to encourage firms that are already there to expand their employment.

□ 1930

It creates a major tax incentive for firms which choose to locate in Northern Ireland and hire individuals who have been traditionally unemployed. In addition it requires American firms to comply with a series of fair employment standards that have recently been released by the British Government.

I think it is fair to say that every Member of this House is aware of the terrible problems in Northern Ireland, many of which can be traced to the discrepancies in employment rates in Catholic regions of that country and in other areas. Workers also tell of rampant direct and indirect discrimination in employment. These charts tell a large part of the story.

Chart one shows the difference in unemployment rates between Great Britain and Northern Ireland. The orange bar shows an unemployment rate in England, Scotland and Wales of 9.5 percent. The green bar shows an unemployment rate of 18.3 percent. Over there, there is a comparison of the unemployment rates of Northern Ireland generally and the predominantly Catholic region of Derry, 18.3 percent versus 59 percent.

Chart two also tells the story of the rampant unemployment and employment discrimination. The first graph compares the Catholic percentage of the work force in Northern Ireland with the percentage of Catholics holding skilled jobs. As you can see, there is a great discrepancy. Thirty-five percent of the work force in Northern Ireland is Catholic, but only 12 percent of Catholics there hold skilled jobs.

The second graph compares Catholic and non-Catholic unemployment in Northern Ireland. The orange line shows non-Catholic unemployment at 13.3 percent. The green line shows Catholic unemployment at 27.7 percent.

To deal with these obvious discrepancies, the British Government has recently unveiled a series of steps designed to further tighten antidiscrimination laws in Northern Ireland. These proposals, however, have yet to be enacted into law. Furthermore, it is not clear whether the British Government will aggressively enforce those standards even if they are enacted. In any event, we are all in agreement that we have a responsibility to do more.

Because my legislation deals with tax incentives, I will first detail the current U.S. tax treatment of foreign source income. Next, I will explain the tax incentives which our legislation creates and, finally, I will explain the fair employment standards and the tax sanctions which go along with the failure to comply.

The United States taxes its citizens on their worldwide income. One major exception to this general rule is the foreign tax credit. It allows U.S. taxpayers a credit against income tax liabilities for a tax paid to a foreign taxing jurisdiction. The credit is subject to an overall limit, equal generally to the amount of taxes paid on that income had they been earned in the United States. The excess of the tax actually paid over the limit can generally be carried forward. In general, the foreign tax credit is denied with respect to operations in South Africa.

Another major exception to the general rule that the U.S. taxes worldwide income is the principle of deferral. Generally, income earned by foreign subsidiaries of U.S. corporations is not subject to tax in the United States unless those earnings are repatriated, that is, distributed, to U.S. shareholders as dividends. The foreign tax credit can reduce the tax on those dividends, however. Certain cases notwithstanding, the principle of deferral, income of foreign subsidiaries can be subject to current U.S. tax.

Our legislation begins with a tax incentive for firms which agree to locate in areas of high unemployment in Northern Ireland, if they also agree to employ individuals who are traditionally unemployed in Northern Ireland.

Looking at chart two again, we see the unemployment rate for Catholics in Northern Ireland is more than twice that for the rate of other religions.

Under this bill, a U.S. firm would have to locate in an area of high employment or already be there. For these purposes, our intent is that high unemployment means a parliamentary constituency with an unemployment rate in excess of 20 percent.

It is our understanding that the British Government does not keep unemployment statistics on the basis of parliamentary constituencies. It is possible that could be obtained, for purposes of this legislation, but our intent is to encourage employment in at least the following areas of Northern Ireland: Belfast, Cookstown, Dungannon, Limavady, Derry, Magherafelt, Moyle, Newry, and Mourne, and Strabane.

Next, at least 40 percent of the corporation's work force would have to be composed of members of a religious minority in all of Northern Ireland. Under the bill, firms meeting both tests, the high unemployment location test and the religious minority test, could generally qualify for an additional tax benefit. This benefit will allow the firm to calculate its U.S. foreign tax credit without regard to the foreign tax credit limitation with respect to Northern Ireland manufacturing income.

For example, if a firm had Northern Ireland manufacturing income of $10 dollars and a worldwide income of $100 and paid $4 in tax on the Northern Ireland income, present law would limit the credit to $3.40. Our bill would allow the full $4 to be taken as a credit.

It is also our intention to encourage employment. Therefore, a firm could not qualify for this benefit if it did not meet the 40 percent threshold by dismissing workers who were not members of a religious minority.

Finally, the benefit would only apply if the tax rates in Northern Ireland did not differ materially from the tax rate imposed on other types of income. These determinations would be made under the general regulatory authority of the Secretary of the Treasury.

Under our legislation, U.S. firms in Northern Ireland would always, regardless of whether they elected the benefit, have to comply with a series of fair employment standards, and certify their compliance to the Secretary of the Treasury. These fair employment standards are the expression of our intent that the U.S. taxpayer should, as a condition of receiving tax benefits, abide by fundamental standards and equity that are commonplace in the United States. U.S. taxpayers should never subsidize behavior that would be blatently illegal if practiced in the United States.

The fair employment standards are modeled after standards proposed by the British Government, and include the following: First, the taxpayer would have to take steps to ensure that no direct or indirect discrimination on religious or political grounds existed in employment. Second, the taxpayer would have to establish that they actively practice equality of opportunity in employment. The third, the taxpayer would have to take the advantage of affirmative action programs designed to give unrepresented groups better access to employment and training opportunities.

Again, let me stress that these proposals are for all intents and purposes identical to those recently advanced by the British Government. Therefore, a certificate of compliance from the British Fair Employment Agency that a taxpayer was abiding by British standards would possess strong evidentiary value that the taxpayer was in compliance with the Donnelly standards for purposes of certification by the Secretary.

However, such certification of compliance would not be conclusive since the Secretary of the Treasury would at some point determine that the British Government was not aggressively

enforcing their fair employment standards.

Finally, a statement by the Fair Employment Commission that the taxpayer was not in compliance with the standards would create a conclusive presumption that the taxpayer was in violation of the Donnelly standards.

The bill envisions that taxpayers failing to meet the fair employment standards would lose both the foreign tax credit with respect to Northern Ireland source income as well as the benefit of deferral with respect to that income. These sanctions would ensure that U.S. firms practiced fundamental standards of fair employment in Northern Ireland.

The first standard envisions that U.S. employers would take steps to ensure that no direct or indirect discrimination on religious or political grounds exists in employment. That standard would, therefore, require employers to act aggressively to ensure that employees who are members of a religious minority are not discriminated against on the basis of pay, dismissals, or other standards of employment.

In addition, discrimination in the workplace would not be tolerated. For example, employers who permitted provocative religious or political symbols in the workplace would be held in violation of the standard. Isolated incidents of this type would not of themselves be sufficient to cause a violation of the standard.

An employer would also be in violation if he failed to promote a worker or kept that worker employed at a level below his qualifications principally because of that worker's political or religious beliefs.

In addition to ensuring that discrimination does not exist in employment, employers would also have to practice equality of opportunity in employment. Thus, employers could not discriminate against a potential employee on the basis of religious or political beliefs.

Under this legislation, it would not be sufficient for employers to practice equality of opportunity employment and take steps to ensure that no direct or indirect discrimination existed in employment. Employers would have to take advantage of affirmative action programs to actively recruit minority employees.

For example, employers could not argue that skilled jobs are not filled by members of a religious minority because they are not qualified for such jobs. Instead, employers would have to aggressively advertise the availability of such jobs and take advantage of any affirmative action programs to fill the jobs, both skilled and unskilled, with workers from a religious minority. Failure to take advantage of affirmative action programs would place the employer in violation of the Donnelly standards.

Mr. Speaker, with respect to all three fair employment standards, it is our intent that the standards would not be violated unless the taxpayer engaged in a pattern of discrimination which tended to disadvantage an employee of U.S. firms operating in Northern Ireland.

The Secretary of the Treasury would have regulatory authority to implement the provisions of this legislation. Thus, I anticipate that the Treasury Department would further define the Donnelly fair employment standards through regulation.

In addition, the Secretary would be required to determine by July 1 of every year from the beginning in 1989, whether a U.S. taxpayer was in violation of fair employment standards. In addition, every U.S. taxpayer having an operation in the north of Ireland would be required to make an annual report to the Secretary on the extent of its compliance with the Donnelly fair employment standards. A taxpayer who willfully failed to make such a report would be fined not more than $25,000 and could be subject to 1 year in prison.

The bill would generally be effective for taxes paid or accrued or income received or accrued after December 31, 1988. The employment incentive provision would be effective for the period beginning after that date.

Mr. Speaker, this legislation is reasonable and it is fair. All that it does is encourage U.S. firms to locate in this troubled region of the world while ensuring that they abide by reasonable, fair employment standards. The bill says that we will not subsidize discriminatory behavior, and that is right and correct policy.

Every Member of this House is concerned about the violence and the discrimination in the north of Ireland. Previous attempts to end the problems have only met with limited success. To the extent that at the root of these problems is unemployment and employment discrimination, our bill is a constructive response.

I plan to work in the coming weeks and months to urge the members of the Committee on Ways and Means and Members of the Congress who are friends of Ireland to act expeditiously on this legislation.

The adoption of this legislation will go a long way toward rectifying wrongs of the past, to make sure that every child born in the north of Ireland, whether from the minority community or the majority community, will have equal opportunity, not just in housing, but most importantly in the opportunity to earn an honest, decent living, that those people will not be discriminated against either when hired or either when promoted, that those U.S. companies that do business, and we encourage U.S. companies to do business in the north of Ireland, that they will hold to the same employment standards that we hold them to in the United States.

Illegal activity, illegal discrimination that would not for 1 second be tolerated in the United States of America cannot be tolerated in any other nation of the world. I urge every American company doing business in Northern Ireland to take a close look at this employment standard, at their hiring standards and their promotion standards so that they make sure even before the enactment of this legislation that they, in fact, are not in violation of some of the most basic principles of fairness and equity that we enforce on American companies here on American soil.

Mr. COYNE. Mr. Speaker, I rise in support of the legislation introduced today by my distinguished colleague from Massachusetts [Mr. DONNELLY]. I am a cosponsor of this legislation.

This legislation addresses the problems of discrimination and unemployment in Northern Ireland.

The legislation seeks to eliminate discrimination by denying the foreign tax credit to United States corporations doing business in Northern Ireland and which discriminate in the manner outlined in the bill.

The legislation also provides incentives for those United States firms operating in Northern Ireland which locate in a qualified area, that is a parliamentary constituency with an unemployment rate in excess of 20 percent. The legislation provides that to qualify for these incentives the company also employ members of a religious minority in excess of 40 percent.

Mr. Speaker, the sanctions may appear to be harsh, especially in view of the fact that United States firms employ 11 percent of the work force in Northern Ireland. However, the high rate of unemployment in the Catholic community is indisputable and the Government has not taken the necessary actions to eliminate the problem.

The New York Times in November, 1987 quotes a study which states that the unemployment rate "is 2.5 times as high among Roman Catholic men as among men who belong to the Protestant majority."

I see no reason why U.S. tax policy should contribute to this problem by encouraging actions which perpetuate the problem of discrimination. Yet at the same time I am not unmindful of possible disinvestment. So, in order to prevent that, there is a strong incentive in the bill in order to encourage investment in areas of high unemployment.

Recent statements by the British Government of its intentions to take action, sometime in the future are, in the opinion of some, the result of the campaign for the MacBride principles.

I hope that this legislation will enable the British Government to move from its seemingly lethargic state to one in which it moves more aggressively to bring its policies in

Northern Ireland more in line with its recent statements.

If the British Government does in fact move more aggressively to end discrimination and to reduce unemployment and if the companies respond to the positive provisions of this legislation we could accomplish a reduction in the unemployment rate and an end to discrimination without using the sanctions provided for in this bill.

Mr. McGRATH. Mr. Speaker, I rise in support of the legislation my colleagues and I are introducing today which will help to bring about more fair and equitable employment practices by American corporations doing business in violence ridden Northern Ireland.

As I am sure all of my distinguished colleagues are aware, religious minorities, in Northern Ireland have, for many years, experienced considerable and blatant discrimination by employers throughout the region. It is unthinkable and reprehensible that we, as Americans, should continue to provide tax benefits and incentives to foreign subsidiaries of American corporations who do not uphold and practice the same nondiscriminatory employment standards mandated by law in the United States.

The legislation we have introduced today will deny tax benefits to any American subsidiary doing business in Northern Ireland which does not abide by the fair employment guidelines which were recently advanced by the British Government. Under these guidelines, an employer would have to take every necessary step to ensure that discrimination in employment based on religious or political beliefs or national origin is eliminated. Employers would also be required to implement programs which would bring about a swift end to direct and indirect discriminatory activity.

Any American subsidiary not abiding by these fair employment guidelines would lose two important tax benefits. First, no foreign tax credit would be provided against Northern Ireland source income. Second, all income from Northern Ireland sources would be taxed currently in the United States, regardless of whether the income was distributed to U.S. shareholders.

Mr. Speaker, this legislation is an important step toward ensuring that American subsidiaries are not adding to the already difficult and volatile situation in Northern Ireland. I encourage all my colleagues to support this legislation and help ensure that religious persecution and discrimination is not fueled by the United States Tax Code.

Mr. DONNELLY. Mr. Speaker, in conclusion, let me say that there is an enormous incentive provided in this legislation, an incentive for companies based in the United States to locate in areas of high unemployment in Northern Ireland, and I would hope that those same United States companies either that do business in Northern Ireland or wish to do business in Northern Ireland will take a look at these incentives and take a look at the opportunities that are available and take a look at a work force that is as skilled as any in the world. I think that if, after taking a strong, hard look both at the economic situation, the political situation and the religious situation and some of the constructive proposals that are coming from this side of the Atlantic, that they would then make a decision to locate some of their facilities in those areas of high unemployment.

Again, Mr. Speaker, we look forward to enacting this legislation in the 100th Congress. Twelve members of the Committee on Ways and Means have gone on this legislation as original cosponsors, Members who are concerned about the situation there.

Mr. Speaker, I yield back the balance of my time.

□ 1945

TRIBUTE TO THE LATE HONORABLE JOHN H. DENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. GAYDOS] is recognized for 60 minutes.

GENERAL LEAVE

Mr. GAYDOS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order tonight.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GAYDOS. Mr. Speaker, let me say this before I recognize my good friend, the gentleman from Illinois [Mr. GRAY], that these special order remarks are in tribute to our late colleague, Congressman John H. Dent from Pennsylvania. We would have more individual participation here today if it were not for the unorthodox schedule that we had today. I have many prepared statements which I will put into the RECORD at the proper time.

We do have here with us Congressman MURTHA who is the successor to Congressman Dent, a very close friend of John Dent.

We have also a very close mutual friend of ours, Congressman KEN GRAY of Illinois, who served in this House around roughly 16 or 18 years with John Dent and who came back to us after having served 20 years and having a hiatus and he is back with us and is about to retire this year. So I think we are extremely fortunate that the gentleman is here today to spread upon the RECORD his sincere feelings about our deceased colleague, John Dent.

Mr. Speaker, at this time I yield to my friend, Congressman GRAY of Illinois.

Mr. GRAY of Illinois. Mr. Speaker, I want to first thank my friend, the gentleman from Pennsylvania, for taking this time to eulogize a great American and a great Congressman, John Dent.

Mr. Speaker, I came here in 1955 and shortly thereafter, about 1958, John Dent came to this House and from the day he took office he was in that well or in some Committee on Education and Labor or I served with him on House Administration and he was fighting for the working man.

If I were asked by the family to put an epitaph on John Dent's tombstone, I would say he was a fighter for the working man. I will guarantee that the coal miner and those people who have to work in the bowels of the Earth and those who have to work by the sweat of their brow had no finer champion in the Congress of the United States than John Dent.

John was a small man in stature, but he was a big man in heart, a big man who wanted to do everything that he possibly could to raise up the social and economic well-being of the people that he represented.

I recited a poem way back in the sixties and John came up to me and said, "I like that poem. Can I have a copy of it?"

Of course, no one knows where the copy of that poem is now, but the title was, "Are you a wrecker, or are you a builder?"

In memory of this great American and the man that we are eulogizing today, John Dent, I would like to recite that poem because I think it has a great message of the type of individual that John Dent was and what a fighter he was for 20 years in this Congress.

I watched them tear a building down,
A gang of men in a busy town;
With a "ho, heave, ho" and a lusty yell,
They swung a beam and the sidewall fell.
I asked the foreman, "Are these men as skilled
As the men you would hire if you had to build?"
He just laughed and said, "No, indeed,
"Just common labor is all you need;
"So I thought to myself as I turned and walked away,
"Which of these roles have I tried to play?
"Have I been a builder who works with care,
"Measuring life by the rule and square?
"Making my deeds to a well-laid plan,
"And patiently doing the best I can?
"Or have I been a wrecker who walks the town,
"Content with the job of tearing down?"

The moral of that story is that if you are inactive, if you are not doing anything for your constituents, you are just as destructive in tearing things down as someone who takes a sledgehammer.

Mr. Speaker, grass will literally grow up in the cracks of the sidewalk if you do not walk on it; so I want to dedicate that to the memory of John Dent, because in the 16 years that I served side by side with John on House Administration and watched him come here as a Representative of the Committee on Education and Labor and fighting for black lung benefits and fighting for a

decent minimum wage and fighting for those people who have no voice, other than his voice at that time, and I might say parenthetically that he was exceeded by a great Congressman, JOHN MURTHA, who is continuing to be a real fighter and a builder for Pennsylvania and for that district and for the coal miner and the other people that he has the honor of representing.

So I want to thank the gentleman from Pennsylvania [Mr. GAYDOS] for giving me this opportunity of telling how much I enjoyed serving with John Dent and what a great Congressman, a great American, that John was.

I want to thank the gentleman and the other members of the delegation so much for taking this time to singularly recognize this great American.

Mr. GAYDOS. Mr. Speaker, I want to thank our colleague, the gentleman from Illinois, for those fine remarks.

I know that if there was any possibility at all that John Dent could communicate with us, he would say, "A job well done and thanks, my good friend."

Mr. Speaker, when John H. Dent died 11 days ago, the people of both Pennsylvania and the United States lost a great legislator, and I personally lost one of my best friends, and I know Congressman John MURTHA feels the same way.

John rose from humble beginnings to become one of the strongest protectors and supporters of America's working men and women. He quit school in the sixth grade because of the death of his father and, at that tender age, he was forced to find a job to help support his younger brothers and sisters. But, he didn't let that end his schooling, believe me.

Throughout his life, John was a voracious reader, he took correspondence courses, and he studied at the Great Lakes Naval Training Center. His reading, studies, and lively discussions developed Johnny's natural instinct for politics and for debate.

This in turn helped him get a job with the Rubber Workers Union as an organizer, and that position became the springboard for his election to the Pennsylvania House of Delegates in 1934. He then moved on to the Pennsylvania Senate where he served from 1936 until 1958.

John was the Pennsylvania Senate's Democratic floor leader for 17 years until he was elected to the 85th Congress in 1958 to fill the vacancy created by the death of the late Representative Augustine B. Kelley of Westmoreland County.

When he was first sworn into his House seat, the "Washington Evening Star" described Johnny as "A peppery, fast-talking son of an Italian immigrant who rose to become * * * [a Member of] the Congress of the United States." And when I came to Congress 10 years later, he hadn't changed much at all.

In 1968, John had already been here for 10 years. He knew his way around the halls of Congress and he was quick to take a fellow Pennsylvanian of his adjoining congressional district from McKeesport under his wing.

John Dent and I were close, both at home and in Washington. In fact, I used to ride on numerous occasions from his home to Washington and return. We had adjacent districts in southwestern Pennsylvania and we served together on both the Education and Labor and the House Administration Committees. I was a member of his Subcommittee on Labor Standards, and he was a member of my Subcommittee on Compensation, Health and Safety.

In that capacity, I learned to love John Dent and also to appreciate his many attributes and to know, to find out and determine what made him tick and what his true feelings were at arm's length.

Volumes could be written about his legislative accomplishments and I say that without qualification, but he is probably best known for his role as the champion of the working men and women of the United States.

The enactment of the Coal Mine Safety Act of 1969 was one of his major legislative victories. The bill helped to reduce fatalities and injuries in mines and provided compensation for workers afflicted with black lung disease.

Johnny's legislative skills were demonstrated by his skillful handling of the Employee Retirement Income Security Act [ERISA], which he helped pass which he originated and was the floor manager back in 1974. This complex piece of legislation now protects the pension rights of U.S. workers, both blue collar and white collar, and is still one of the most important pension laws we have today.

He was a tireless overseer of the Fair Labor Standards Act, and he led the fight year after year to assure a fair minimum wage for every worker in this country. There was hardly a bill involving labor and education issues in which he did not have a major role during the 20 years he spent in Congress.

John Dent also was a man of uncanny perception in the field of international trade and economics.

I just mentioned to one of our previous speakers here on a special order, Congresswoman BENTLEY from Maryland, and I did mention to her, and I want to reiterate it here and repeat it here in this part of the RECORD, that if John Dent were here, Congressman JOHN MURTHA and I both know that he would be over here participating and you would hear his booming voice over here taking up the cause and you would hear a very lively discussion on the floor.

When I came to Congress in 1968, he was a lone voice crying in the wilderness, warning of the perilous path down which our trade policy was leading us in this country.

Many of his predictions in the 1960's unfortunately came true and today we are faced with a $170 billion trade deficit and 1.5 trillion dollars' worth of foreign investment as a matter of record here in the United States.

I was privileged to benefit from his insight into international trade. He was one of the House's most respected and acknowledged experts on this issue and I am deeply indebted to him for sharing his expertise during the 10 years that we served in Congress together, and also what he did in this area on behalf of the Members of this great body.

Whether speaking on trade or education and labor issues, Johnny Dent always impressed Members on both sides of the aisle with his fairness, his willingness to listen, and his dedication to America and American workers. He was not afraid to speak out against injustice and poor treatment of working men and women, and his words were always accompanied by deeds.

John put words into action, and when he did, he improved the lives of this Nation's workers. He fought for higher wages, unemployment insurance, retirement pensions, occupational disease, compensation laws, mine safety laws, and many other worker rights.

True, they were not the most popular issues at times, but they were the issues that count in this country.

Johnny Dent was a public servant in the highest sense from the time he first joined a union in his youth until his death 11 days ago. He dedicated his very life to his country and he always tried to make the world a better place in which to live and work.

My dear friend and colleague Johnny Dent will be missed by all those who knew him, and his grieving family can be consoled by the living memory which he left behind in American law on the record spread here in this House, this U.S. House of Representatives.

Mr. Speaker, I offer my warmest condolences sincerely to his family, to his widow, Babe, and Freddy, his son, who is an attorney, an outstanding attorney back in our district, and his two daughters and his granddaughters and all his relatives, in-laws and all, my most warmest condolences. I wish them well as they remember and rightfully reflect on the life of a great man, a great man and a great legislator, and yes, a great orator and a great debator, a friend of the Pennsylvania

delegation, our friend, the friend of the Congress, John Dent.

Mr. Speaker, I yield to my colleague, the gentleman from Pennsylvania, Mr. JOHN MURTHA who succeeded our good friend, John Dent.

Mr. MURTHA. Mr. Speaker, I thank the gentleman very much for yielding.

I want to join KEN GRAY and thank the gentleman from Pennsylvania [Mr. GAYDOS] for taking this special order on behalf of the Pennsylvania delegation.

KEN, those were certainly moving words, and JOE GAYDOS, who was such a good friend. I want to join them in wishing Mrs. Dent the most heartfelt expressed condolences to her and her wonderful family. Their granddaughter works for me, Jennifer. She does such a wonderful job. We appreciate her dedication. She is just like her grandfather, a bubbly, hard-working enthusiastic young woman who takes everything seriously, but also understands how important it is to do a good job.

I remember first meeting John Dent when I was a teenager. My grandfather was a good friend of Gus Kelley, who was the predecessor of John Dent. I remember meeting Congressman Kelley at that time and also John Dent, who was in the Senate at that time. I was so impressed by his enthusiasm and his talking to me as a young teenager as if I knew something that was going on. It always stuck with me.

Then I did not see him for years. I came up here and he acted like he remembered, when I reminded him that my grandfather had been a partner of his and Gus Kelley's years before. He acted like he remembered, but he did me the greatest favor when he got me on the Appropriations Committee after I had only been in Congress 9 months.

John Dent was the kind of person who had so many friends, and as anybody knows who works with the Steering and Policy Committee, they know that it is a real accomplishment to be able to work the type of compromises that are necessary in order to get the person you want on that committee.

□ 2000

When my good friend, former Congressman John Dent, died on April 9, our country lost one of its greatest leaders and our citizens lost one of their greatest champions.

When John Dent retired at the end of the 1978 session, I asked his office for a list of bills he had developed over his 44 years in government and his 20 years in Congress. In response, I received a 24-page, single-spaced summary of legislation pioneered and developed by John Dent.

The hallmark to the legislation was it all helped people, the working men and women of America, the men and women who had fought their way up the ladder as had John Dent.

The very first major bill I voted on as a Member of the House of Representatives was the Retirement Income Security Act, a bill he spent 7 years developing, and that since its passage has protected the pensions of millions of Americans. Other areas where this skilled and progressive legislator concentrated until new laws were on the books included the black lung program, unemployment compensation, workmen's compensation, job safety, labor law reform, and trade regulations to protect jobs.

John Dent's life symbolized the American dream. I believe he was the last Member of Congress who did not complete high school. At his retirement, he noted that when he first ran for the State house of representatives he spent $47. Through hard work and dedication, he worked his way into a major leadership role in both the State legislature, and then later in Congress.

I also want to add that John Dent was a personal friend. When I first came to Congress, it was his wisdom and knowledge of how Congress worked and how to get things done that served as my introduction to the House of Representatives.

When he retired in 1978, there were two statements he made that I have always particularly remembered. Asked about future plans, he talked about touring to talk about the economy. And in a statement that was as forward-looking as his career had always been, he said:

I don't believe the majority of America has any realization of the depth of the danger we face economically in this country. We have got to pay more attention to providing production jobs upon which this country survives.

And in a typically reserved statement about all the success he had achieved, John Dent said:

I have not been an outstanding Member of Congress. I've been an ordinary Member but to me that's the strength of Congess.

Well, all of us who had the opportunity to serve with him would disagree that John Dent was an ordinary Member of Congress. He was anything but.

You get a picture of the man from some of the comments of those who served with him. Reviewing the CONGRESSIONAL RECORD tributes to John Dent upon his retirement, there are some key words mentioned. Fighter. Warmth of spirit. Quickness of mind. Articulate. Genuine. Loyal. A good friend.

In an early campaign brochure, a comment was made about John Dent that summarized much of his outlook, and is a good reminder to us all:

It is imperative that we elect men who are fully conscious of their duty to all the people and are not the servants of the special few.

That marks the way John Dent spent his entire legislative career.

Today I am reintroducing legislation to name the Jeannette Post Office the "John Dent Post Office Building." While his true memorial will be in the bettered lives of millions of Americans and the people he directly represented in Westmoreland County, the renaming of the post office would be a reminder of a career of a great American that should not and will not be forgotten.

Mr. GAYDOS. Mr. Speaker, I want to thank my colleague, the gentleman from Pennsylvania [Mr. MURTHA], for those fine remarks.

Mr. YATRON. Mr. Speaker, will the gentleman yield?

Mr. GAYDOS. Mr. Speaker, I yield to my friend and colleague, the gentleman from Pennsylvania [Mr. YATRON], who has served with John Dent for the same length of time that I did, roughly 10 years before John Dent retired.

Mr. YATRON. Mr. Speaker, I rise today in great sadness to pay tribute to my good friend and former colleague, Congressman John H. Dent. John's life was dedicated to public service and to representing the people of Pennsylvania's 21st District.

After serving for 24 years in the Pennsylvania Legislature, John Dent ably served in this Chamber for 20 years. I was privileged to serve with John for much of this period. I first met John when I entered the Pennsylvania House of Representatives in 1957. John was Democratic floor leader in the Pennsylvania Senate at that time. As a young legislator, I was deeply impressed with John's full grasp of the issues and his ability to work with members on both sides of the aisle to enact legislation. I often joined with other freshmen members to watch John at work. It was an outstanding learning experience for all of us.

John's legislative skills were put to good use here in the House. In his long career, he built up an impressive record. His outstanding work is still seen in our current laws dealing with private pensions, workmen's compensation, and black lung insurance. In all of his endeavors, he never forgot his roots and the workers and families he represented. He truly was a friend of working Americans. Out Nation is richer as a result of John Dent's work on their behalf.

I feel honored to have known and served with John H. Dent. He was a caring and compassionate man as well as a dedicated political leader and public servant. Mr. Speaker, I join my colleagues in extending my deepest sympathy to Mrs. Dent and to all of the members of John's family.

Mr. GAYDOS. Mr. Speaker, I want to thank my colleague from Reading for those fine remarks.

Let me at this time enter into the RECORD on behalf of those Members who had prepared remarks and could not be here for one reason or another, enter into the RECORD those remarks. I have those statements of Members, including the co-dean of the Pennsylvania delegation, JOHN MCDADE, who was a very close friend of John Dent and who in his prepared statement said the following, and I will just take out one excerpt. "Truly we miss John Dent, the friend of the working man and woman, for his amazing ability for compromise. Even more I think we miss his foresight. Listening to the current debate on the trade bill, I remember when John first spoke out on unfair trading practices and on the effect that they would have on our Nation. I am only sorry that he could not be here with us as we wrap up the trade bill."

Mr. MCDADE was referring in those prepared remarks to the trade bill that we will be taking up probably tomorrow. I remember many occasions when John Dent would get on the floor and he would ask this body to pass some kind of trade legislation because it was in dire need and his warning went unheeded.

Today through a set of circumstances and the unveiling of certain economic factors internationally, we are passing a trade bill.

Mr. Speaker, I have the remarks of the gentleman from Pennsylvania [Mr. MURPHY], another one of our colleagues in an adjoining congressional district, and let me just pull out a few things that Mr. MURPHY says. "John Dent long was the champion of the underprivileged, the wage earner, the disabled worker and the organizations that molded together America's labor force. Together with our former and honored colleague of Kentucky, Carl Perkins, John Dent authored and steered through the House the black lung benefit bill for disabled coal miners. He was the architect and advocate of many of the provisions in the occupational coal mine health and safety laws of our Federal Government. He is one of the crafters and a strong advocate of the Employee Retirement Income Security Act, ERISA, which today provides retirement protection for millions of American workers and former workers. John Dent was a strong and trusted leader of our Pennsylvania delegation in this House of Representatives."

I also want to refer to the gentleman from Pennsylvania [Mr. WALGREN] who is from an adjoining congressional district, and I want to make reference to the fact that the gentleman from California [Mr. HAWKINS] and the gentleman from Ohio [Mr. STOKES] and the gentleman from Ohio [Mr. MILLER] and others have submitted statements for the RECORD.

Let me say this, after having put in the formalities that we have gone through, let me say that all of us have in exercising our common sense and everyday experience read a man as we find him at arm's length. When one associates oneself in a rather long period of time such as 10 years as I have, working down here in Washington with our former colleague, John Dent, certain conclusions are drawn and opinions are drawn because one deals with a person when they are off guard. One deals with them in their time of grief, deals with them in their time of happiness, and deals with them in their time of constraint and when they are in the throes of a very important bill with all those ramifications and pressures placed upon them. Observing a person under those close circumstances at arm's length one really gets to know a person. They cannot fool anyone because in using common sense one sees how the person acts and behaves when he is off guard, as I mentioned, and one really gets to know a man from the inside out, for want of a better descriptive term. That is how I got to know John Dent and I have to conclude that all the things that were said about him by my good friends JOHN MURTHA, and GUS YATRON, and KEN GRAY and the rest of the host of others that are going to put their formal remarks in the RECORD, they cannot be here because of prior commitments in this very, very questionable operation we have here in the House, but all of those men submitted those statements and all those individuals I know have said so sincerely and from their heart because they knew and they got to learn and respect the John Dent that I know, the John Dent that was full of compassion, who in explaining a particular item or a piece of legislation, it very easily would engender tears in his eyes and when his wrath was disturbed he could holler loud and long. He had a lot of friends. He was a gregarious person. We all know that the homosapien is a gregarious creature but John Dent was just a little special. When I went throughout the country with him on hearings concerning ERISA as a young freshman Congressman, I remember the tenaciousness of the man. He put in long hours. I would be tired, and I would be begging to quit the hearings for the day, and we would be staying in a hotel in Chicago, for example, and I would want to get back to the hotel and John Dent, on the other hand, was just getting his second wind. He could drink wine with the best of them, and he was a good friend and colleague.

Mr. MURTHA. Mr. Speaker, will the gentleman yield?

Mr. GAYDOS. Mr. Speaker, I yield to the gentleman from Pennsylvania.

Mr. MURTHA. What the gentleman from Pennsylvania [Mr. GAYDOS] has just said reminds me of the time when we were worn out, it was 3 o'clock or 4 o'clock in the morning in some of those sessions that we went through in the Watergate years, and during those very difficult times when we were passing legislation at the end of a session, it was as if John Dent had not been up for 36 hours or 24 hours because he was a vigorous and enthusiastic and excited and dedicated Congressman in those times and he had such great respect and love for his family. He has such a wonderful family. Mrs. Dent has been such a big part of his dedication and all of us feel so strongly for Mrs. Dent.

□ 2015

I often think about "Doc" Morgan, "Bob" Nix, "Dan" Flood and all the real powers of the Pennsylvania delegation, those years that all of them were here, 20 to 30 years, and were such an influence on us. But John's family had such a profound impact on him and such a profound influence because he had such a love for them. So it is with great sorrow that we eulogize his passing. But I again want to just compliment the chairman for taking this time to pay this special tribute to our good friend John Dent.

Mr. GAYDOS. Mr. Speaker, I appreciate those remarks. I will take just a few more minutes before yielding back. On behalf of JOHN and I, and I know GUS and John Dent's many friends, that was the human side of John Dent.

When I came here he was 60 years of age. When he left and retired he was 70. He passed away roughly at the age of 80.

Between his 60th and 70th birthdays, that man had more steam, for want of a better descriptive term, more ability to dogmatically support an issue than any of the young Members of the House, including myself at that time—and I was only 40 at that time and with all black hair.

John Dent really was an example, a man you would want to follow. I want his granddaughters here with us today and his family to know the humanistic aspect of John Dent, how we love him, what great kidder he was under so many circumstances.

As I mentioned before, when he got on to legislation such as the minimum wage bill, in the 20 years that he was here he was so effective in handling that that when he got on that there was nobody to destroy or amend or defeat that bill because John Dent had it.

I remember when we first started discussing the black lung bill. Right now the American miner in this country today, the poor miners in Kentucky, West Virginia, Ohio, parts of

Maryland, parts of Pennsylvania, none of them then had any compensation for black lung which you were sure to contract if you worked in a mine. I remember we talked about the pittances of funds and the amounts to be paid to the black lung victims and their widows.

Today, and I think I am pretty accurate, although I stand to be corrected, but I believe I am accurate in saying that we expended $2.5 billion last year on black lung to pay those unfortunate people who contracted black lung, which everybody ignored in this country. If you go back and take a look at what he did, and under those circumstances, this new legislation—I remember that he was the father of OSHA, he and "Dom" Daniels from New Jersey. I was on the committee. I remember passing that legislation. That was new legislation concerning a circumstance which had existed for a couple of hundred years. We had no OSHA legislation, no legislation governing the person's right to have decent treatment and healthy conditions on the job when he was making money and then paying Uncle Sam his taxes and then raising a family and making more taxpayers, and we had no protection for those people. They were thrown on the so-called labor scrap heap.

That was new, novel legislation at the time. John Dent just tore right into it. He was so successful.

So we are going to miss him very much. We have missed him.

Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. MURTHA].

Mr. MURTHA. Mr. Speaker, let me ask that we put in the RECORD some of John Dent's speeches which predicted the future so accurately, one from April 4, 1978, "A Protectionist Congress is Needed Now," and other comments that he made, "The Tragedy of the Importation of Steel Fasteners," from April 4, 1978. He was so accurate in his predictions. I ask that those be made part of the RECORD.

The articles referred to are as follows:

A PROTECTIONIST CONGRESS IS NEEDED NOW

Mr. DENT. Mr. Speaker, on March 9, 1978, I made a brief report to the House on an international trade-related aspect of my recent trip overseas. Unfortunately, there were a few minor errors made in recording my remarks. In the interest of accuracy, I would like to submit a corrected statement for the record.

A PROTECTIONIST CONGRESS IS NEEDED NOW

Mr. Speaker, on February 24 I arrived home from a tramp steamer trip in the Mediterranean. When I left, our ship was loaded to the gunnels with perhaps 90 percent American goods funded under one or another American foreign aid programs. When we arrived in Corpus Christi there was not 1 pound of freight on that American ship. That was its second straight voyage without a return load.

I just received a message from the port of Houston. The Houston mass transit system just purchased 500 double-decker buses from Germany. The first load arrived in Houston on a Russian ship. During my trip we were held in the Port of Morocco for 9 days out on the quay, at a $4,500 waiting time cost to the American company, while they let foreign ships go in and out. Other individuals witnessed them taking corn and other goods from American ships, loading it on a truck, taking it to the end of the pier and loading it on a foreign ship.

I want to tell the Members that if they do not pass some kind of protective legislation, this country will not long survive. Twenty years ago I told you this. For 20 years I pleaded with you. Now I am leaving Congress for many reasons, but one is that I could not convince this House of the dangers inherent in this crazy "free trade" policy.

Mr. GIBBONS. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, in 1929 and 1930 the debate that we have heard here tonight took place. At that time instead of being the Mikulski amendment, it was the Smoot-Hawley amendment. My Lord, how soon do we have to relive history? How lucky can we be to even have the opportunity to relive history? The same type of discussion, the same type of amendment plunged the American economy into the worst depression that it has ever known. The unemployment rate hit 25 percent.

Our economy collapsed. The international economy collapsed. Hitler rode to power on that. Hirohito rode to power on that. About 1 million American men died because of that. That is what we are talking about tonight.

Is there anybody in this Chamber that will dispute one word that I have said?

Mr. CARNEY. Mr. Chairman, will the gentleman yield?

Mr. ROONEY. Mr. Chairman, will the gentleman yield?

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. Well, good. When I get through, I hope all of you get your 5 minutes, too.

The gentleman from Pennsylvania has limited my time to 5 minutes. Will the gentleman from Pennsylvania allow me to have additional time?

Mr. DENT. Mr. Chairman, give the gentleman 1 minute and I will answer that.

Mr. GIBBONS. Mr. Chairman, will the gentleman from Pennsylvania (Mr. ROONEY) allow me extra time? I will yield, Mr. Chairman, if I am granted additional time.

(At the request of Mr. Dent, and by unanimous consent, Mr. Gibbons was allowed to proceed for 1 additional minute.)

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. Mr. Chairman, I will yield for that purpose.

Mr. DENT. Mr. Chairman, the Smoot-Hawley law was passed. In between the time of passage and the time of the effective date of the Smoot-Hawley tariff, we had the 1929 depression. Smoot-Hawley never went into effect in this country, not 1 day of our existence. The Smoot-Hawley tariff rates were never set forth, because the depression came in and stopped Smoot-Hawley, which was supposed to be so bad and it never went into effect, the bugaboo of all bugaboos, the most disgraceful era in our existence.

Mr. GIBBONS. Mr. Chairman, Smoot-Hawley was still in effect and it did go into effect, I will say to the gentleman from Pennsylvania (Mr. Dent). Everybody anticipated it and the economy, as we know, went to pieces. The international agreements that we had went to pieces. The Germans moved from a collapsed economy into militarism in World War II. The Japanese did the same thing; so it did go into effect and part of it is still in effect. It was repealed as a democratic measure under Franklin Roosevelt.

Mr. CARNEY. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I will yield if the gentleman gets me additional time.

Mr. CARNEY. Mr. Chairman, the gentleman made a statement; now, back it up.

Mr. GIBBONS. Mr. Chairman, I yield only if the gentleman will get me additional time. My time has been limited by the gentleman from Pennsylvania (Mr. Rooney).

The CHAIRMAN. The gentleman from Florida does not yield.

Mr. GIBBONS. Mr. Chairman, if we examine the last two issues of Time magazine, we will find that Bethlehem Steel has been sending us a message in a two-page ad. The first one I refer to is the one that had Joe Califano with red-tape wrapped all around his neck, with his tongue hanging out. If we look at those two-page ads from Bethlehem Steel, they were not asking for this. They were asking for enforcement of the laws we have on the books of dumping and countervailing. They are entitled to that. I support it and everybody in this Congress supports it and we want to make sure then do.

This week Time magazine, with the ladies on the front cover in their athletic games, had another two-page spread by Bethlehem Steel which has been referred to here and has been talked about as the need for this amendment, complained that they needed protection, but not like this. They needed protection from the 5,600 Government laws and regulations that hamstring them. That is what the people in the steel industry are asking for. They are not asking for this. I have talked to them. I have asked them questions in hearings, all the steel companies, and not one single one wants this kind of thing, because they know that it will slaughter us all in the long run.

Mr. Chairman, I repeat, why do we have to go through this kind of history so many times? Why cannot this body remember the mistakes we made and the good things we did? Let us not do it again. I say to my Democratic Members, it was Franklin Roosevelt and a Democratic Congress that repealed all this.

Mr. CARNEY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I urge my colleagues to retain the "buy American" provision to H.R. 11493, the Amtrak Improvement Act of 1978.

In calendar year 1977, Amtrak purchased over 43,000 tons of steel—at a cost of over $15 million.

By the end of 1978, Amtrak plans to have purchased over 64,000 tons of steel for over $25 million.

To the extent that these steel purchases are made possible by the use of public funds, they should not result in the loss of American jobs.

Amtrak has functioned well under a buy American policy which is very similar to the language included in this bill.

The buy American provisions attached to Amtrak authorization bills have not greatly raised Amtrak's costs.

In fact, buy American provisions have saved jobs for countless Americans as well as generated needed tax revenues in our communities.

Amtrak officials have assured me that "buy American" provisions have not affected their costs.

On March 23, 1978, Amtrak officials testified as a "good example" during "buy American" hearings before the subtle. I was the one voice which fought his battle before the gentleman came here, and that was over creamery industry imports. I screamed. What was coming in was a mixture, but it was really sugar and cream.

The CHAIRMAN. The time of the gentleman from Pennsylvania (Mr. Dent) has expired.

(By unanimous consent, Mr. Dent was allowed to proceed for 5 additional minutes.)

Mr. DENT. Mr. Chairman, I have not made many speeches since I have not been able to handle things; but I tell the Members that what we are talking about tonight, after the two last decisions made within 3 days by the U.S. Supreme Court, can well mean the end of democracy.

Let me cite those two cases. I am not a lawyer. I am an uneducated person who went to the eighth grade; but I learned through a lifetime of experience. Furthermore, I am the oldest living legislator in the United States in years of service. I learned it the hard way.

Mr. Chairman, there were two Supreme Court decisions. Let me cite one. The State of Iowa was upheld in its right to have a different base for taxation on interstate business in Iowa than on intrastate business, No. 1, which sets up, in its own way, a tariff between States.

Mr. Chairman, the fundamental strength of this Nation has been free, unlimited transfer of goods and services between the States. That has gone down the drain.

The second of these memorable decisions was made just this week. That one is of some importance, especially to the Japanese. It is a case brought by the Zenith Corp., the last remaining color television manufacturer in the United States. They went over to Japan and made a contract to have their televisions made over there in order to learn why the Japanese can undercut us.

Do the Members know how they do it? The Japanese pay rebates to their manufacturers of television sets, which makes the market absolutely uncompetitive insofar as we are concerned.

Let me indicate what that decision does. It is a decision that was asked for by the President because of what the law says. The word "may" was used in that law, the tariff law, with respect to which there was a debate on this floor. The debate was based upon an amendment in the Tariff Act.

The gentleman from Florida (Mr. GIBBONS) ought to know this; he is a student: If any industry is injured by way of the loss of jobs, then that loss of jobs could be compensated for by a tariff increase.

The House took the position that they ought not to be limited to tariff increases, but they may choose; the President may choose the route of tariff increases, quotas, compensating duties, or complete embargo. Using the word "may" was bad judgment, because this administration asked for and got a decision that they wanted. The Supreme Court did not say that it could not impose; they said he did not have to impose.

So, what does that mean? That means that every nation in the world, on its exports to the United States, now can set the rates of their goods in the United States to the point that, by rebates to their manufacturers, they can undercut any product sent into the United States. Let me tell all of you something tonight—and this may be the last time that I take this well—but let me tell you all that everything that has happened, I predicted. The largest deficit—Sam and the rest of you—the largest deficit in the history of the United States in trade has been created in the first 3 months of this year, $17 billion.

We are selling gold. One other nation in the history of the world had to revert to the selling of gold as the only means of having an export. When the regimes of Rome could find no more nations to plunder, Rome went down the drain. We are selling gold. Let me tell you some arithmetic. The American dollar is 70 cents to the dollar today in Japan. They are protesting because our products now going to Japan and their products coming here, the 70-cent dollar is injuring their exports to the United States.

The CHAIRMAN. The time of the gentleman from Pennsylvania has again expired.

(At the request of Mr. ROUSSELOT and by unanimous consent, Mr. DENT was allowed to proceed for an additional 5 minutes.)

Mr. DENT. Let me give you this sample so you will understand what the devil is going on. Here we are, with our dollar 30 percent less. We are selling gold like Rome did, and we are taking back 70-cent paper dollars for one dollar's worth of gold in our Treasury. No nation can survive—no nation can survive trading bullion for paper dollars. We are buying back, mind you—we are buying back, selling our gold and paying for our deficit in trade with 70-cent dollars to them and one dollars to the American people.

How long can you graduates, all of you, of universities; graduates, all of you, of colleges; learned people, how can you stand in this House and not recognize the fault we are in, the fault of people that have lost the desire to save and preserve a nation? My father came here as an immigrant. He was given a pick and a shovel, and he never cared.

When I spoke to him, replying to his broken English to me, would say: "Do not talk to me in Italian; talk to me in English, talk to me in American."

That is what I am saying to the Members. Believe me, as God is my witness, this Nation will not survive 10 more years unless we in this Congress have the courage to stand up and admit there is no way that we can buy buses, there is no way we can buy buses for the mass transit system that we are building, for billions of dollars, and have the buses shipped over to the United States in Russian ships. Let me tell the Members that one Member of this Congress, without naming names, protested that. Do Members know what we got? We got a concession after humbly begging on our knees, begging the Russians who had the contract, begging them on our knees, and they conceded to give us half of the shipments of the buses from Germany to the United States.

Let me ask the Members a question: How are we going to pursue a war? There is no longer a merchant marine—it is a very poor one. There is no longer one tourist ship.

No nation of the world allows American airplane companies to create within their territory a tourist trip. We cannot sell tourist tickets in Germany or Italy for tourists to come to the United States. But we are not allowed to do that in their countries.

All of these things add up to one thing: The default of the Congress of the United States. If we are in low respect, if we are in low regard, we brought it on ourselves.

I give this to the Members in my parting word. Please become what this body was: one-third of the U.S. Government—not the last leg of Government but that leg of Government equal to the other two, the Judiciary and the Administrative.

How can we sit here, how can we go back to our people and how can we send out letters and send out false stories about how important we are? We are not important. We cannot even make a decision.

I am ordered to do this. I will not do it. I have never done it and I never will.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Florida (Mr. Young).

Mr. YOUNG of Florida. I thank the gentleman from Pennsylvania for yielding.

Mr. Chairman, I am as disturbed as I can be about the necessity for the United States to sell gold. I did not want to miss the opportunity to tell the gentleman and our colleagues on the floor this evening that in the last 2 months we have sold 600,000 ounces of gold during the same period that the International Monetary Fund has sold $169 million worth of gold.

I want the gentleman to know that one of the purchasers, in fact the largest purchaser of the IMF gold sale was India, who also owns $745 million worth of our national debt, and who is also one of the largest recipients of our foreign aid program.

Mr. DENT. That is another question.

THE TRAGEDY OF THE IMPORTATION OF STEEL FASTENERS

(Mr. Dent asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DENT. Mr. Speaker, there is a trade-related case pending that was discussed this morning in the hearings. It is one that we have already talked about concerning the steel fastener industry.

I want to give the Members a few quick points regarding this matter:

Between 1968 and 1976 steel fastener imports rose by 395 million pounds, an increase of 127 percent.

At least five major plants have closed since 1977, and this is only April 1978. Other shutdowns are expected in the near future.

Imports now account for 45 percent of the American market compared to 21 percent in 1969.

Over 7,300 steel fastener workers have joined the jobless rolls since 1969.

Since 1974 employment in this industry has dropped by 26 percent. The fastener industry is operating at 57 percent of capacity.

Mr. Speaker, I want to call the attention of this body to a couple of facts that we ought to at least start thinking about. In fiscal year 1962 there were 59,532,000 payments being paid to Americans from selected social welfare programs in the United States. In 1977, the number of payments stood at 173,495,798. (Enclosed are tables which outline in detail these programs.) Put another way, that means that one person is paying something to some or all of four other persons in the United States. With only one-fifth, or 20 percent of the American people contributing to the Treasury without aid of some kind from the Federal coffers, the road before us is not only narrow but it is also very short.

I tell the Members now that this is the worst position this Nation has been in in its entire history and this Congress has to do something about it.

TABLE I.—SELECTED SOCIAL WELFARE PROGRAM STATISTICS: FISCAL YEARS 1962 and 1977

	Fiscal year—	
	1962 actual	1977 estimate
"GROUP I"		
1. "Workers collecting unemployment compensation"	[1] 6,467,000	[7] 2,527,400
2. "People collecting military retirement benefits"	[2] 313,436	[8] 1,175,019
3. "People collecting social security"	[2] 17,280,364	[8] 33,200,000
4. "Civil service retirees or survivors"	[2] 602,269	[9] 1,522,600
5. "Railroad-retirement beneficiaries"	[3] 941,000	[9] 1,200,000
6. "People on welfare"	[4] 7,398,700	[10] 21,500,000
7. "Veterans collecting GI benefits, other than education aid" [6]	[5] 179,170	[8] 357,958
8. "Veterans or survivors collecting pensions or compensation	[5] 4,244,898	[8] 4,908,242

[1] Department of Labor. Manpower Administration. Unemployment Insurance Service. Figures include those for the State unemployment insurance program, the Federal employee program, the program for ex-servicemen, and the railroad unemployment program.
[2] Fiscal year 1964 Budget Appendix.
[3] Railroad Retirement Board.
[4] "Trend Report—Graphic Presentation of Public Assistance and Related Data—1970." Social and Rehabilitation Service. National Center for Social Statistics.
[5] Fiscal year 1964 Budget Appendix and the fiscal year 1962 VA Annual Report.
[6] Benefits included for this item are vocational rehabilitation, housing grants, automobiles and other adaptive equipment, and burial allowances.
[7] Social Security Monthly Bulletin, January 1978: average weekly number of beneficiaries. Only includes Federal employees. Statistics on private sector not available.
[8] Fiscal Year 1979 Budget Appendix.
[9] Monthly Benefit Statistics: Railroad Retirement Board.
[10] Estimates from the Department of Agriculture for food stamps, the Social Security Administration for recipients of SSI and AFDC.

SELECTED SOCIAL WELFARE PROGRAM STATISTICS: FISCAL YEARS 1962 AND 1977

	Fiscal year—	
	1962	1977
"GROUP II"		
1. Military personnel	2,807,819	[1] 2,073,580
2. Government workers	2,514,350	[2] 2,842,651

[1] Fiscal year 1979 Budget Appendix.
[2] Manpower Information Statistics Division, Civil Service Commission.

SELECTED SOCIAL WELFARE PROGRAM STATISTICS: FISCAL YEARS 1962 AND 1977

	Fiscal year—	
	1962 actual	1977 estimate
"GROUP III"		
1. "Children in school-lunch program"	[1] 14,184,000	[9] 26,800,000
2. "People helped under Medicaid"	[2] NA	[10] 21,600,000
3. "Medicare beneficiaries"	[3] 0	[11] 25,400,000
4. "Veterans getting hospital care"	[4] 589,975	[10] 1,322,773
5. "People receving food stamps"	[5] 132,000	[10] 17,100,000
6. "College students, excluding veterans, getting loans and/or grants"	[6] 186,465	[12] NA
7. "Adults receiving vocational education"	[7] 2,100,000	[13] NA
8. "Children of poor families counted for Elementary and Secondary Education Act"	[8] 0	[14] 9,965,575

[1] Preliminary figure from the fiscal year 1984 Budget Appendix.
[2] There was no "Medicaid" program in fiscal year 1962. There were, however, public assistance payments to assist in paying the medical expenses of the poor on Welfare. Data on the number of persons who received this assistance in meeting medical expenses is unavailable.
[3] There was no "Medicare" program in fiscal year 1962. However, some of the elderly poor were assisted through the public assistance programs. Refer to footnote number 3.
[4] Fiscal year 1964 Budget Appendix and the fiscal year 1962 VA Annual Report.
[5] September 1962 figure from the fiscal year 1964 Budget appendix.
[6] Report on the National Defense Education Act—fiscal years 1961 and 1962. Office of Education.
[7] Office of Education, Bureau of Occupational and Adult Education, Division of Vocational and Technical Education.
[8] There was no Elementary and Secondary Education Act in fiscal year 1962.
[9] Department of Agriculture Food and Nutrition Budget Division.
[10] Fiscal year 1979 Budget Appendix.
[11] This number is a minimum estimate from the fiscal year 1979 budget estimate. The number cited is for those receiving medical insurance assistance. There were an additional 5,900,000 recipients of hospital assistance. However, there is significant overlap between these 2 parts of the "Medicare" program in that many of those receiving hospital assistance are also counted as receiving medical insurance assistance. As a result, the higher of the 2 figures was taken as a minimum.
[12] The total number of loans and grants (excluding veterans education benefits) made during fiscal year 1977 was 3,350,000. A number of students receive awards under more than 1 program. Special Analysis of the Budget, fiscal year 1979.
[13] 4,024,104 in fiscal year 1975. More recent data is not available. Division of Vocational and Technical Education, Office of Education, 1976.
[14] Office of Education program data.

[From the CONGRESSIONAL RECORD, Sept. 8, 1978]

Mr. DENT. Mr. Chairman. I rise in support of H.R. 11711, the trade adjustment assistance programs improvements. Until the Trade Act of 1974 (and its liberalized trade adjustment assistance provisions) was passed, the record of assistance to workers who had lost their jobs because of imports was totally unacceptable. The process required by the Federal Government was arduous and full of obstacles clearly designed to minimize any real help to a displaced worker.

The Trade Act of 1974 changed the adjustment assistance procedure by easing the very stringent criteria and taking into account the real hardships visited upon workers who have lost their jobs because of circumstances beyond their control. Under the new procedure (beginning on April 3, 1975, through July 31, 1978) 4,019 petitions have been decided: 1,342 have been certified, affecting 365,478 workers; 1,700 have been denied, effecting 383,123 workers; and 772 are still pending. As one can see, even under liberalized conditions over half the worker who petition for assistance do not get it. Moreover, that is only part of the picture, since only the worker who was directly involved in the manufacture of the imported goods can qualify for assistance. Any other worker indirectly affected by a plant shutdown or drop in business activity because of imports could not qualify for any assistance. This is hardly a satisfactory answer to unemployed workers and their families, and hopefully this bill will go a long way toward improving these problem areas.

However, I do want once again to call the House's attention to the fact that the provisions of the Trade Act of 1974 shift the financial responsibility for unemployment caused by international trade agreements from the Federal Treasury, where it legitimately belongs, to State unemployment compensation funds, resulting in a hidden cost to the States that will ultimately total hundreds of millions of dollars.

Let me explain. Under the Trade Act of 1962, States that paid workers determined to be unemployed as a consequence of increased imports were reimbursed by the Federal Government for the unemployment compensation benefits paid to these workers. Reimbursement was, and is, an appropriate approach inasmuch as these workers were unemployed as a consequence of national policy decisions in an international forum, and for no other reason. Such dislocation and unemployment was inherently recognized and expected in the Trade Act of 1962 and in other subsequent trade arrangements, such as the Canadian-American Automotive Agreement.

It surfaced as an even greater issue in deliberations on the Trade Act of 1974, primarily because of the growing number of industries affected by imports, and because of complaints that TRA qualifying guidelines were far too stringent. In dealing with this aspect of the law, the guidelines were liberalized, but the burden for supporting the cost of these TRA benefits was shifted to the States, who have absolutely nothing to say about our trade policy. I pursued this matter in my own State of Pennsylvania and found the following, staggering information:

Under the Trade Act of 1962, 1,040 Pennsylvania workers received a total of $1,066,000 of TRA benefits from the State of Pennsylvania, reimbursed totally by the Federal Treasury, from 1962 through April 3, 1975.

Since the passage of the Trade Act of 1974 through June 31, 1978, 55,394 Pennsylvania workers have qualified for TRA benefits and have received $143,014,215. Of that, $59,552,000 came from the Federal Treasury; the remainder, $83,462,215 came out of Pennsylvania's unemployment compensation fund. This is the case in virtually every State in the country.

This raises two very important issues:

First. The cost this Nation bears as a consequence of its trade policies is vastly understated, and, in fact, hidden. In addition to the revenues lost to communities and States as a consequence of unemployment due to imports, we also pay out enormous amounts of money for these trade policies at both State and Federal levels. Now, if you call the TRA office of the Department of Labor and ask them what the cost of the TRA program is, they will report that under the new act from April 1975 through June 30, 1978, 365,478 workers received benefits totaling $486,785 million. Of that amount, Pennsylvania received $59,552,000. They are right. That is the Federal cost. It is staggering in itself. What they do not tell you is that the real cost to the country is approximately three times that because the States pay these same workers unemployment compensation. In the case of Pennsylvania, the State paid unemployment compensation benefits of $83,462,215 for which it should not be responsible, and for which it will not be reimbursed. And that is only through June 30, 1978. Petitions to the Department of Labor are increasing on a daily basis, and believe me, we have yet to see what unrestricted imports cost this Nation. It is estimated that TRA benefits are increasing by approximately $10 million a month. I suggest that the total payments of TRA, by both State and Federal Treasury will easily approach hundreds of millions of dollars on a yearly basis.

Second. The upshot of this shifting of costs is that it leads itself to easy misrepresentation of a program to which many look as part and parcel of the rationale to continue our present trade policies. It is easy to say that the damage of imports is minimal because we have only paid out of the Federal Treasury a small amount of dollars, ignoring that the major burden of the cost is State borne, and also ignoring that more than half the claims for TRA are denied. Moreover, some of the highest unemployment rates are evidenced in those areas where the most workers have applied for and received TRA benefits.

Thus far the Department of Labor, as of July 31, 1978, has certified 1,342 petitions covering a total of 365,478 workers. Over one-half of these workers are in the States of Michigan, Missouri, New York, Pennsylvania, Wisconsin, Ohio, and California.

I am not for a moment suggesting the dissolution of the TRA program. For many workers, it represents the difference be-

tween bread on the table and nothing. I am suggesting that the TRA program was never meant to be a supplemental welfare system, or an excuse for categorically relinquishing more of this country's production jobs in the name of free trade. Moreover, it is grossly inequitable at a time when States are experiencing serious financial difficulties, to expect States to pay for national trade decisions. If the high cost of our trade policy is able to be seen for what it is, then perhaps, those who make the trade decisions will pay closer attention to what their decisions are costing this country, and those of us who are committed to fiscal responsibility will realize the direct impact that trade policies have on unemployment and its concurrent problems.

Mr. McDADE. Mr. Speaker, I am very grateful for this opportunity to honor John Dent, who died on Saturday, April 9. John retired from the House of Representatives in 1978 after serving the people of Pennsylvania and this body with distinction for 20 years.

As a Member of the U.S. Congress, John Dent was a pioneer on many of the issues that still command our attention. John worked diligently for pension reform, and he is credited with crafting legislation to raise the minimum wage. The drive to provide black lung benefits and to ensure mine safety also benefited from John's able leadership.

Congressman Dent has been justifiably called a great friend of labor. His many accomplishments on the House Labor Committee and as the chairman of the Labor Standards Subcommittee were instrumental in improving the quality of life for all American workers. He was truly devoted to the best interests of labor and committed to the welfare of our Nation.

The Pennsylvania delegation has a proud tradition of working together in service to the Commonwealth and the Nation. I greatly valued my working and personal relationship with John Dent, He had that great ability to put partisanship aside in pursuing common interests and always gave a fair hearing to those with whom he disagreed.

Truly we miss John Dent, the friend of the working man and woman, for his amazing ability for compromise. Even more, I think we miss his foresight. Listening to the current debate on the trade bill, I remember when John first spoke out on unfair trading practices and on the effect that they would have on our Nation. I am only sorry that he could not be here with us as we wrap up the trade bill.

In recognition of his service and out of a genuine affection for the memory of John Dent, I am pleased to join my esteemed colleagues from the Pennsylvania delegation in supporting legislation to name the United States Post Office in Jeannette, PA in his memory.

I am pleased that my colleagues are joining me today in honoring John Dent with this special order, and I know that the post office in Jeanette will serve as a lasting tribute to a remarkable legislator and dedicated public servant.

Mr. ANNUNZIO. Mr. Speaker, I rise to pay tribute to former Congressman John H. Dent, whose death on April 9, after a long and distinguished career of public service to our country, was a tragic loss to the people of our Nation.

I was privileged to have John as a close and trusted friend during the 14 years we served in the Congress together, and I shall always cherish his friendship, advice, and guidance which he so generously extended to me.

Congressman Dent dedicated his life to public service, and compiled an outstanding record of creative accomplishments on behalf of the working men and women of this country. Before coming to Congress, he served in the Pennsylvania State House of Representatives, and also in the State Senate for almost a quarter of a century. He was the Pennsylvania Democratic floor leader in the State Senate for 17 years.

First elected to the 85th Congress in 1958, John Dent ably represented his constituents from the 21st Congressional District of Pennsylvania during the two decades he served in Congress. He was the second-ranking member of the House Education and Labor Committee, and the chairman of the Subcommittee on Labor Standards, where he helped to shape one of the most productive periods in the history of the United States for enactment of laws protecting the rights and benefits of workers.

John Dent courageously initiated legislation to insure coal mine health and safety. He played an instrumental role in creating the Black Lung Program, and he was an original sponsor of the Occupational Safety and Health Act of 1970 and the Mine Safety and Health Act of 1977. Congressman Dent worked tirelessly on behalf of the men and women of this Nation, improving their educational opportunities, protecting their minimum wage base, and creating the ERISA Program to protect their pension rights.

During his service in the Congress, John always demonstrated the greatest wisdom, insight, and leadership, as he dealt with our country's trade and labor policies. He will be missed by all of us who had the opportunity to work with him and who knew firsthand of his many legislative achievements on behalf of the American worker.

Mrs. Annunzio and I extend our deepest sympathy to the members of his family who survive him.

Mr. MURPHY. Mr. Speaker, I rise with great regret to speak this afternoon in memory of our esteemed and departed colleague, John H. Dent, formerly of Westmoreland County, PA.

My first memories of John Dent were one of admiration and awe. As a college student in 1949, I had the first opportunity to visit our State capitol and when visiting the Senate Chamber, heard Mr. Dent with his booming and convincing voice speak on the floor of the Pennsylvania Senate as the minority leader. One could not help but to admire as he proceeded through his oration with articulation, emphasis, and eloquence as he made his points.

Eighteen years later I had the opportunity of again joining John Dent here on the floor of this Congress as a colleague and member of his Pennsylvania delegation. Mr. Dent was one of our senior members at that time, after having served 22 years in the Pennsylvania Senate. He then established a 20-year record here in the House, capping 52 years of service to the people of southwestern Pennsylvania. Again, my next impression of John Dent was one of admiration. He served as our Pennsylvania member on the Steering and Policy Committee and carried forth an aggressive effort to place the members of our delegation, seven new members in number, onto the varied and important committees in the House. He gave us his advice, his time, and his ability on the Steering and Policy Committee to the benefit of the seven new members and the delegation.

John Dent long was the champion of the underprivileged, the wage earner, the disabled worker, and the organizations that molded together America's labor force. Together with our former honored colleague from Kentucky, Carl Perkins, John Dent authored and steered through the House the black lung benefits bill for disabled coal miners. He was the architect and advocate of many of the provisions in the occupational and coal mine health and safety laws of our Federal Government. He was one of the crafters and a strong advocate of the Employee Retirement Income Security Act [ERISA] which today provides retirement protection for millions of American workers and former workers. John Dent was a strong and trusted leader of our Pennsylvania delegation in this House of Representatives.

I missed him when he left the floor of this House as a teaching colleague, and I now miss him as a friend.

Mr. STOKES. Mr. Speaker, I would like to thank my colleague, the distinguished gentleman from Pennsylvania [Mr. GAYDOS], for reserving this time to pay tribute to one of the great leaders of this body—the late Congressman John Dent. For 20 years, until his retirement from Congress in 1978, John represented the people of southwestern Pennsylvania and our Nation in an able manner. I was saddened to learn of John's passing on April 9, 1988.

John Dent was one of the most dedicated and talented Members of the House. His outstanding leadership ability and knowledge of parliamentary procedures earned him the respect and admiration of his colleagues. He served with distinction on the Committee on House Administration and the Education and Labor Committee.

I had the privilege of serving with John while he chaired the Labor Standards Subcommittee. During my travels with John on congressional factfinding missions to visit coal mines in West Virginia and Costa Rica, I was impressed with his knowledge and expertise in the areas of workers' compensation, coal mine health and safety, and unemployment.

Mr. Speaker, John was a strong and articulate spokesman for the working people of our Nation. His efforts were instrumental in the development of coal mine health and safety legislation and black lung reform legislation. The Occupational Safety and Health Act of 1970 and the Mine Safety and Health Act of 1977 are reminders of his tireless efforts.

Mr. Speaker, I want to again thank my colleague for the opportunity to pay tribute to John Dent. It was an honor to work with him. My wife, Jay, joins me in expressing our deepest sympathy to his wife, "Babe." He will be

sorely missed by his colleagues, his constituency, and our Nation.

Mr. WALGREN. Mr. Speaker, I want to join my other colleagues in paying tribute to John Dent and his career as a representative of working people. I remember Congressman Dent's last speech in this House before his retirement when, as he had so many times over the years, he warned of the damage that free trade, without fair trade, would destroy the manufacturing base of our country. All that John Dent warned against has come true. No issue has risen to such crisis proportion for our economy than the trade issue that John Dent saw coming decades ago.

Mr. Speaker, I want to insert Congressman Dent's remarks of October 27, 1977, in the RECORD again. It is not too late to follow his advise. Tomorrow this House will act on the first comprehensive Trade Bill of this decade. John Dent would be proud of its contents. I urge my colleagues to ponder his life as a strong representative of the best interest of working America—and give meaning to his message as we act to redress the trade deficit he spent a lifetime working against. Although John Dent passed away the other day, his spirit will be present in this House far into the future as we struggle with the imbalance in our trade with the world.

[From the CONGRESSIONAL RECORD, Oct. 27, 1977]

TRADE POLICIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. Dent) is recognized for 60 minutes.

Mr. DENT. Mr. Speaker, this morning I went to the White House for a meeting with the President and his advisers on the crisis facing the American steel industry, its workers, and those communities whose economic life blood depend on steel. Members of the House steel caucus and I listened to the President's people talk about the problem, but we heard very little about solutions.

For the past 20 years, Mr. Speaker, I have been on this floor warning my colleagues about the coming crisis. For 20 years I have attempted to alert the American people about this fallacy called free trade and its disastrous effects on our industrial capacity. For two decades I have preached that this Nation cannot survive on consumption and distribution alone, but also requires a strong and vibrant production base.

Until recently I have been ignored and dismissed as a "protectionist." It took the shutting down of American steel plants to awaken some of my colleagues to the stark reality that we are engaged in an international economic war with countries who do business under different sets of rules, with different priorities, and with different values.

Mr. Speaker, the question of international trade and international economic relations is the single greatest issue confronting this Government, this Congress, and the American people. The question and its resulting problems must be addressed and new solutions proposed. The steel crisis is merely symptomatic of a larger problem involving our entire industrial economy which I believe is threatened by outdated international trade and investment policies which are predicated more on diplomatic and political considerations than on the economic necessities of our people.

Unless we the leaders begin to seriously address the problem, I am convinced that those who must bear the burden, the growing ranks of unemployed production workers, will take their case to the streets and the ballot box for resolution.

Mr. Speaker, I have been given permission by Charles Walters, Jr., the author of "Unforgiven: The Biography of an Idea," to quote extensively from his work on the relationship between international trade and the American agricultural and industrial economy since World War I. The parts of the book that follow are taken from Mr. Walters' own analysis, the testimony of former Georgia Commissioner of Agriculture Tom Linder, and the collected speeches of former Pennsylvania Congressman Louis T. McFadden. I recommend the entire book to those of my colleagues whose own districts have suffered the results of this crazy policy called "free trade" and to those of you who, somewhere down the road, no doubt will meet face to face with constituents who have * * *

Mr. DE LA GARZA. Mr. Speaker, the Congress has been a living force in the American system of government for over 200 years, a dynamic embodiment of its millions of citizens. The will of our people emerges through the agreements and disagreements that develop as each of us as Congressmen attempt to reflect the views and desires of our own constituencies.

Yet, some Members go beyond the mere confines of their own districts, representing and striving to achieve the goals of a far broader constituency—a majority of the body politic. One such individual to whom we pay tribute today is our former colleague John Dent who hailed from southwestern Pennsylvania, who served as a senior member of the Committee on Education and Labor, and who was chairman of the Subcommittee on Labor Standards.

As a Member of Congress for 20 years, John Dent served with a strong sense of "noblesse oblige"—the idea that it was his duty to serve, his obligation as a citizen to do his part. He was principal architect in creating the Black Lung Program. He was in the forefront in the establishment of ERISA to protect the pension rights of all workers. He also was one of the original sponsors of the Occupational Safety and Health Act, and the Mine Safety and Health Act—all legislative contributions which benefited not only the men and women of his district, but all American workers.

The role in the development and enactment of these programs demonstrates the true commitment which John Dent had for mending the ills of our country. I am indeed fortunate to have had the privilege of serving with him. With his passing our whole system loses a significant presence.

It is with deep regret that I say farewell to John Dent. I will remember him with fondness.

Mr. FASCELL. Mr. Speaker, I would like to join our colleagues in mourning the passing of one of our most valued former colleagues, John H. Dent. John first came to Congress in 1958 and worked his way up the seniority ladder of the Education and Labor Committee. He used his position to help working men and women, not only from his southwestern Pennsylvania district, but also from across the country.

John will always be remembered as a particularly good friend to his constituents from the black country region of Pennsylvania. His career spanned 46 years of public service, from city hall to the Halls of Congress. John's many years of hard work and dedicated public service reflected the work ethic of his constituents from western Pennsylvania.

The legislation for which he will be most remembered had the same theme: improving and protecting the health, welfare, and quality of life for working Americans. It is certainly no surprise that John was a guiding force behind the enactment of the Black Lung Program, and an original sponsor of both the Occupational Safety and Health Act of 1970 and the Mine Safety and Health Act of 1977. Those of us fortunate enough to have served with him can surely remember his regular battles to raise minimum wage during his tenure as chairman of the Labor Standards Subcommittee.

Saying, in his dignified manner, that the time had come "when age and common sense dictate retirement," he did just that. Let us make no mistake; John could, and often would, fight long and hard on the issues he felt strongly about. He left those battles behind him when all was said and done and by his own admission "left Congress without bitterness and remorse."

I valued John as a friend and a colleague and will always remember his leadership and his friendship. I feel honored and privileged to have been able to serve in Congress with him. He was a dedicated Congressman and a great credit to his district, to the Nation, and to his family.

I join our colleagues today in expressing my sympathy to John's family.

Mr. FORD of Michigan. Mr. Speaker, after a distinguished career in the Pennsylvania State Legislature, John Dent became an eminent Member of the U.S. House of Representatives. John Dent was truly a representative of the little people, the average working man and woman in America. When John Dent retired from the Congress in 1978 because of ill health, his absence was felt immediately. He had been poised to lead the House of Representatives in consideration of legislation to lift low-wage workers out of their financial morass. John had guided through his Labor Subcommittee and the Committee on Education and Labor a bill to increase the Federal minimum wage. It is fitting that as we remember our departed colleague, soon we will consider legislation to restore the current minimum wage to an appropriate level.

The minimum wage legislation is one of many progressive measures which John Dent championed. Another landmark law synonymous with John Dent is the Employee Retirement Income Security Act, or ERISA. It was his usual concern that American workers should not be exploited or denied the fruits of their labor that led John to conduct extensive hearings documenting cases where hundreds, even thousands, of employees who belonged to company pension plans never received a penny of the annuities. It was John's leadership, political acumen, and legislative skills that assured the passage and enactment of ERISA, which assures that employees cov-

ered by private pension plans will receive the pension to which they are entitled.

A review of significant worker protection legislation of the last two decades invariably leads to the contributions of John H. Dent. If there was legislation to improve the wages and working conditions of American workers, John Dent was involved in shaping the law. In addition to ERISA, John led the movement to reform Federal coal mine safety standards, and was a leading advocate of the Occupational Safety and Health Act.

As we eulogize John Dent today, it is not insignificant that his one elusive goal, in a lifetime of achievements for American workers, is embodied in legislation which may not be enacted. I refer, of course, to the trade bill.

John Dent was the leading congressional advocate for, and doggedly pursued, an American fair trade policy. He headed a special Subcommittee on the Impact of Imports on American Industries and Workers. His hearings verified the manner in which foreign producers, in concert with their government's hidden trade practices, placed domestic industries at a competitive disadvantage. John's predictions of the harm from such practices are a painful reality. Many of the unfair trade advantages foreign competitors have been enjoying are addressed in the current trade bill. If there was some way to revive the bill to the satisfaction of all major parties and have it enacted, what a fitting memorial that would be to John Dent.

Though I have dwelled on John Dent's accomplishments in the area of labor legislation, I do not want to leave the impression that he was a one-dimensional man. Far from it. In his early career on the Education and Labor Committee, John headed an education subcommittee which produced such important legislation as Federal assistance for libraries and the education of needy children, and financial assistance to federally impacted school districts. John was just as dedicated to education issues as he was to worker protection measures; and he approached both with the same sense of purpose and zeal.

What is truly remarkable about John Dent's accomplishments is that he was largely self-taught. John had to leave school at a very early age to work to help support his family. Throughout his varied careers, including his legislative work, John read extensively and pursued correspondence courses. Though he never gained a degree, he could hold his own with the brightest. He had great common sense, and an uncommon ability to cut through the rhetoric and get to the central point of any discussion. John could interpret legislation as well as any attorney. He was also a master at political maneuvering. It was these innate abilities that served John Dent so well and enabled him to accomplish so much. It was his personal warmth, his sense of fairness, and his deep concern for the average American which gained him the admiration of his colleagues.

John Dent was not only my colleague, he was my friend and ally. I am deeply saddened by his death. I will miss him.

Mr. MILLER of Ohio. Mr. Speaker, I want to join my House colleagues today to pay tribute to our dear friend and former Member, John Dent. For two decades, John represented the good people of southwestern Pennsylvania. He was an active spokesman for their concerns and their needs. I had the honor and privilege to serve in this Chamber with John for many years, and I will always treasure the memories of his counsel, his friendship, and his leadership.

He made some of the most important health and labor contributions to our Nation that we've witnessed in recent years. He was deeply involved in developing the Black Lung Program. He was an original sponsor of the far-reaching Mine Safety and Health Act of 1977.

This time today—being set aside to honor John and pay tribute to a distinguished American—is fitting and appropriate. Beyond this occasion, we should all remember the lasting efforts of a man who made the concerns of working people the priorities of Congress. He never lost sight of those he represented first, and best.

I can say without reservation that I learned a great deal from John Dent and I will apply those lessons well in the process of attempting to represent my District just as he did for so many years.

He will be missed. I extend my deepest sympathy to his family and loved ones.

Mr. CONTE. Mr. Speaker, on April 9, our former colleague and my dear friend, John Dent, passed away. As one who had the sincere pleasure of serving in Congress for his entire 20-year tenure, I want to join my friend JOE GAYDOS and others in honoring the memory of this outstanding former Member of Congress.

John and I both came to Congress following the 1958 elections. Although we came from different States and different political parties, we became close friends. I'll never forget some of the cherished memories we shared in the early days of our congressional careers.

John will be remembered for many things during his two decades. It would be hard to understate his contributions to the working man and woman of this country. In particular, his efforts on the Education and Labor Committee made the difference in implementing a strong and effective Black Lung Program. And his work on such labor protection issues as the Occupational Safety and Health Act, the Mine Safety and Health Act of 1977, and the ERISA pension bill are modern-day tributes to the greatness of John Dent.

In the mid-1970's, John became the second ranking member on the Education and Labor Committee, as well as the chairman of its Subcommittee on Labor Standards. He will always be remembered as a quite effective Member of Congress who cared more about getting a job done than he did about getting the publicity. A former Member of the other body from the State of Washington once said that, in Congress, "there are showhorses and workhorses." John epitomized the whole concept of a workhorse.

John came to the U.S. House of Representatives at the age of 50. But his service to the people of western Pennsylvania by no means began then. From 1934—at the age of 26—until 1958, John served in the Pennsylvania State House and Senate, eventually ascending to the Democratic floor leader in the Senate before leaving for Congress. Before that, John served in the Marine Corps. It's not an understatement to say that John gave his entire life to public service.

Mr. Speaker, this country owes a great debt to John H. Dent. This loss will be felt by the scores of people who had the honor and the pleasure of knowing this great American. I will miss him greatly, but my memories of him will always be among my most treasured possessions.

Mr. COYNE. Mr. Speaker, former Congressman John Dent served the House and the Commonwealth of Pennsylvania for 20 years and he served it well.

Mr. Dent served as a member of the Jeannette City Council, the Pennsylvania House of Representatives and the Pennsylvania Senate before being elected to the U.S. House of Representatives.

The Almanac of American Politics stated that Mr. Dent was "regularly the chief House sponsor of bills to raise the minimum wage." The House may shortly take up minimum wage legislation. Passage of that legislation would consitute a fitting tribute to Mr. Dent and the working men and women whom he served so well as a Member of this body.

Mr. Speaker I want to include at this point an editorial from the Pittsburgh Post Gazette, dated Thursday, April 14, 1988 concerning Mr. Dent.

The editorial follows:

[From the Pittsburgh Post—Gazette, April 14, 1988]

AN ADVOCATE FOR LABOR

There never was any doubt about the strong identification with organized labor of U.S. Rep. John Dent, the Greensburg Democrat who died last weekend at the age of 80.

In his 20 years in Congress (1959-78), Mr. Dent made no bones about being a strong advocate for labor. Even if there was irony in the fact that during his tenure, labor was hurt by the loss of thousands of jobs in his district, thanks in part to changing economic times, labor's support for him never seemed to waver.

Undoubtedly, that was because of his lead in sponsoring bills to improve coal-mine safety and health, including the black lung compensation law, and the Employee Retirement Income Security Act (ERISA) of 1982.

Mr. Dent will be remembered for bettering the lot of the working man and woman.

Mr. GAYDOS. Let me conclude these special remarks by making this observation on the RECORD and I do this without qualification: John Dent was a decent man. John Dent did not have a real enemy in this House. John Dent was a God-fearing man. John Dent was a good family man. Above all, above all these things, this country is better off because John Dent was a good legislator. He helped so many people. Yes, he was prejudiced, because he helped more working men and women and more of the poor in this country rather than the corporate structure or the big business interests. That is the John Dent that we are talking about. I want his family to

know that that is the authentic John Dent. I am sure they know it already.

I want his family to know he was missed when he retired from this House and he is going to be missed now that he has gone on his way.

Mr. Speaker, I yield back the balance of my time.

NATIONAL LIBRARY WEEK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 60 minutes.

Mr. OWENS of New York. Mr. Speaker, I rise in celebration of "National Library Week." I rise to pay tribute to the libraries and librarians across the Nation who are responsible for a very vital part of our educational infrastructure. Yesterday we had numerous librarians from across the country under the sponsorship of the American Library Association visiting the offices of their Congressmen to urge continued support by the Federal Government for certain vital programs that are run by libraries through libraries.

National Library Week comes every year. This year it is celebrated from April 17 to April 23.

Of course, we had numerous weeks. There is probably not a week in the year which is not taken now by some group that wishes to bring attention to its particular kind of work. We have become pretty cynical about these various public relations gimmicks that we view special weeks as being. I think they are ceremonies which have some value, ceremonies which we should take seriously in some cases. In the case of our libraries, I think this year is very important for us to dwell on the meaning of these particular institutions in the context of a number of problems which we are considering.

We will be voting on the trade bill tomorrow. One great concern with the trade bill is America's competitiveness. In the process of viewing and reviewing what is needed to make America more competitive, we of course added a section to the trade bill which focused on education. We are finally beginning to understand that underneath all activities of a complex society, undergirding all of those activities is education. We understand that. But we do understand that education is not something which takes place only within formal classroom, with a teacher and students.

Education is not a phenomenon that happens and occurs only within the setting of a university or college. Education is occurring in our society in many other ways. If we want to promote education, if we want to have the most educated populace in the world—and I think we should aspire to have the most educated populace—it may be good to aspire to be the most populous nation in the world, it may be good to be aspiring to be the richest nation in the world, but I think in order to reach those goals, as a goal unto itself we ought to aspire to have the most educated populace in the world.

Very practical benefits flow from this emphasis and concern with education.

Within the effort to build and to create the most educated populace in the world, we have to understand that it is necessary to saturate our environment with all kinds of activities related to education. We must saturate the environment, especially our young people. There must be many different ways, many different instruments, many different institutions which are promoting education.

Among these institutions are the ones which have proven to be the most accessible, the most universal, available, and useful to most members of the family. For example, every member in the family can be educated and receive some benefit or assistance in the process of education from the public library.

If you stop and consider the fact that public libraries are involved in people's lives all the way from preschool until they die, unlike public schools or colleges or universities, most people if they stay within the formal school setting they will only be there for 20 years.

To get a Ph.D., from first grade to the time you get the Ph.D. you are in a formal school setting for 20 years. If you live to be 65, the other 45 years of your life, you may be associated with libraries.

So National Library Week is not just another week, it is not just a gimmick. It is a ceremony, it is a gimmick, it is public relations to some degree but we ought to take it more seriously and understand it, in this case as a part of what we are trying to do here in the Congress and a part of the priority agenda of the Nation.

As is the custom, the President has issued a statement on National Library Week. He states:

> Celebration of this week reminds us of the truth that a well-educated citizenry is critical to the health of any republic. Offering an ever-increasing number of services, America's libraries play a vital role in the education of our people and both symbolize and facilitate the freedoms of inquiry and expression so dear to our country and to millions around the world who do not yet enjoy this liberty.

I will not quote nor read the entire letter of the President.

Mr. Speaker, I would ask unanimous consent to enter the entire letter of the President in the RECORD.

The letter referred to is as follows:

THE WHITE HOUSE,
Washington, April 17-23, 1988.

NATIONAL LIBRARY WEEK

Greetings to everyone joining the American Library Association in observing the 31st annual National Library Week.

Celebration of this week reminds us of the truth that a well-educated citizenry is critical to the health of any republic. Offering an ever-increasing number of services, America's libraries play a vital role in the education of our people and both symbolize and facilitate the freedoms of inquiry and expression so dear to our country—and to millions around the world who do not yet enjoy liberty.

Libraries' stores of knowledge include, of course, the great books of the ages; libraries help to ensure that the wisdom of our ancestors continues to inspire people, young and old, with the intellectual legacy that is our heritage. During National Library Week and all year long we should set aside time to read; to use our school, university, community, and private libraries; and to help our children discover the treasures that await them in all our Nation's libraries.

Nancy and I send good wishes to America's librarians and patrons. God bless you, and God bless America.

Ronald Reagan.

Mr. OWENS of New York. The President is not alone in highlighting the value of libraries.

Harry Truman made the statement,

> Everything I know except my law I learned through the public library.

I am sure that he would add to that that he learned law at the law library.

John Kennedy made the statement,

> Good libraries are as essential to an educated and informed people as the school system itself. The library is the key to progress and the advancement of knowledge.

These are three Presidents who recognize the value.

This year's symbol for the "National Library Week" is the library card itself. It is the card with a charge, they have a little symbol with lightning striking a library clock glorifying the hometown library clock. This may seem a simple approach, an approach that is not going to attract that much attention, but library cards are still not within the purview or within the reach of millions of children. There is a campaign being launched to guarantee that every youngster will have in his life a library card and become familiar with the fact that here is a certain part of life that everybody is expected to develop as they go along.

This morning from 10 o'clock until actually 1 o'clock this afternoon, my Subcommittee on Select Education had hearings considering the future of research and development in the area of education for the next decade.

During the course of those hearings, Dr. James Coleman of Harvard testified on some results of studies that had been done comparing American students with students in other countries. It was interesting to find that in general when compared with our part-

ners in the free world, the other industrialized nations, America ranks at the bottom. United States students rank near the bottom. He made the point that not students in conglomerate, where you take a large number of American students and compare them with a large number of European students. Even when you narrow it down comparing our best students studying biology in high school with the students in Europe who are studying biology, specializing, and our best students who are studying chemistry with students in Europe who are studying chemistry or students in Japan we still are, with the very best score, lower than the other industrialized nations that we are comparing ourselves with.

I think it is a kind of revelation which directly impacts upon our deliberations with respect to the trade bill and our concern about being competitive. We must understand that our young people at this moment in history are not getting the kind of education they need. They are moving backward instead of forward.

At the same hearing, the President of the American Federation of Teachers, Albert Shanker, pointed out the fact that reading programs, certain studies demonstrated that our young people who are most exposed to reading do best in school, but only a small percentage are now continually exposed to reading. So that youngsters in fourth grade are sometimes reading more books and more exposed to reading than a student in the ninth grade, that as students progressed through school they read less and less.

□ 2030

Part of this is due to the fact that libraries are really not considered very important in the larger social setting, and encouraging young people to read is not considered that important. We are missing an opportunity by not stressing the need for youngsters to read on their own and to develop their reading habits. That is as vital as any other aspect of the educational process.

In my city, in New York, we have just gone through a long process of searching for a new chancellor for the school system where education is on everybody's mind, and a chancellor was finally selected. He came in, and actually he was treated like a king. I am proud of the fact that our city paid such homage to an executive who is coming in to run the school system. I am proud of the fact that so much attention by the press, and television and radio was directed on the problems of the school system for a brief period of time, at the same time that great stress was being placed on a new beginning for the New York City school system which services 1 million children, and 60,000 teachers and administrators. It is the largest system of its kind in the Nation, and it spends tremendous amounts of money, close to $6 billion, and all this attention is focused on the school system, all the attention that has been focused on the process of education, and the mayor of the city has announced that he will launch an across-the-board cut of all the city's libraries. They will be cut by 6.3 percent. These are libraries which I can assure my colleagues that they do not have huge budgets to begin with. There are three systems in New York, the Brooklyn Public Library, the Queens Public Library, New York Public Library system. They all make up the total city library system, and an across-the-board cut of 6.3 percent is devastating to each one of these systems.

In Brooklyn alone a 6.3-percent cut means that the Brooklyn Library budget will be cut by $2.25 million. Eighty staff positions will be eliminated. Four branches now open on Sunday would have to close. Ten of the twenty-six branches open on Saturdays would have to close. On Saturdays 45 of the 58 branches would have to close an extra day per week because they do not have the personnel. Morning and evening service of many libraries would be eliminated. The library would have to cut its spending on book acquisitions by $600,000. Another $400,000 would be cut for maintenance on the purchase of necessary equipment and furniture. In terms of hours of service to the public library service, it would be reduced nearly to what they were at the height of the city's budget crisis when New York City was on the edge of bankruptcy in 1965.

Mr. Speaker, this is an example that indicates how terrible it will be to have these cuts imposed on the Brooklyn Public Library.

The New York Public Library, which services Manhattan, and the Bronx and Staten Island will have a cut of almost $4 million and will suffer similar kinds of cuts in services.

I am giving my colleagues these examples partially because they are close to home, and I am familiar with it and agonizing with the people who use these libraries, but they are not unusual, and they are not unique. Yesterday in my office there were representatives from Texas and Oklahoma who said that the situation had become so bad in their States that the States no longer would be able to put up the matching funds necessary to qualify for the library services and construction act funds. These are Federal funds that are available. Only a small percentage is required to be put up by the States to match it, but, nevertheless, their States are about at the position where they will forego and give up Federal money because the States cannot or will not provide the money for the libraries, and I say, "will not" because I do not think any library budgets anywhere in the country are so great that it is necessary to make these kinds of cuts when the local budgets are in difficulty.

Mr. Speaker, the problem is the mind set and the attitudes of decisionmakers and people who are in charge. They always see libraries as either a luxury or necessary evil or an appendage. Nevertheless these same people pay great lipservice and are said to be greatly concerned about education. You cannot in a place like New York City promote education and claim to be promoting education sincerely, on the one hand providing extra money for the board of education and the chancellor while at the same time you cut the public libraries which all of the children of the city use. People do not understand the processes of education. People do not understand that for real education to take place the environment must be saturated with educational activities. People have to make it possible for youngsters to pursue their own interests and especially pursue the reading of books. Reading is so very fundamental in the education process, and any special treatment or extra encouragement that we can provide should be encouraged by government that is really interested in education.

Mr. Speaker, we have fortunately in the budget that was submitted, passed by the House of Representatives, $1 billion extra for the function of education. We have recognized in this House the importance of education, and it is a high priority in the budget. I congratulate the people who prepared the budget, the Budget Committee. I congratulate Congressman GRAY for consistently in the last two budgets emphasizing education.

Unfortunately, the Senate does not have a setaside of $1 billion for education. We have $1 billion more than the Senate for this purpose. We should look closely at what we do with that $1 billion, and, in the effort to approve education across the country we should look at some portion of that billion dollars as being dedicated to the problems faced by libraries.

Mr. Speaker, libraries have suffered drastically under the Reagan administration. This year, as in past years, the President, although he congratulates libraries and recognizes their value in a ceremonial letter, the President each year has placed zero in the budget for the Library Services and Construction Act.

The Library Services and Construction Act is the major instrument through which the Government, the Federal Government, provides assistance to local libraries. That program fortunately each year is funded by the Congress despite the fact that the President continues to place zero in the budget for it.

The Library Services and Construction Act's appropriation for fiscal year 1988 was $125,037,000. The American Library Association has recommended an appropriation for fiscal year 1989 of $132,357,000. That amount is for all of the activities in a wide range of public libraries across the country. It is indeed a small amount. If you want to have some idea of how small the Library Services and Construction Act budget is in totality, just stop and think that for 25 years now the Library Services and Construction Act has been funded by the Federal Government. In all those 25 years all of the money spent in this act would not add up to the price of one aircraft carrier. That is all that we have spent for 25 years.

So, Mr. Speaker, these appropriations are meager in comparison with the need, and I would like to just note that, in addition to the Library Services and Construction Act, there is this summary from the American Library Association of what they are recommending as appropriation amounts including money for the Higher Education Act which goes to libraries, our research and college libraries, and the total of that amount recommended by the American Library Association is $23 million for this fiscal year, 1989, up from our present appropriation of $10 million. In other words, they want to more than double that amount because it is a very tiny amount for research activities, and for education in general we spend a very meager amount. Most corporations, as was pointed out in my hearing this morning, strive to spend. We spend such an infinitesimal amount on our research activities and activities related to research and development that we can hardly indicate that it is so tiny, but the Higher Education Act presently does not provide it, and L.A.'s is increased to $200,294,000. We are recommending small increases for education statistics, which includes library surveys, we are recommending small increases for the National Library of Medicine and a number of other items which I think are useful, but I do not want to read the recommendations in their entirety.

Mr. Speaker, I include for the RECORD the following summary:

SUMMARY OF AMERICAN LIBRARY ASSOCIATION APPROPRIATIONS RECOMMENDATIONS

Fiscal Year 1989 Labor-HHS-Education Appropriations

Library programs	Fiscal years—				
	1987 appropriation	1988 appropriation	1989 authorization	1989 Reagan request [1]	1989 ALA recommendation [2]
Library Services and Construction Act, total	$125,500,000	$125,037,000	$181,000,000	0	$132,357,000
Title:					
I, Public Library Services	80,000,000	78,986,000	95,000,000	0	83,360,000
II, Public Library Construction	22,500,000	22,595,000	50,000,000	0	23,544,000
III, Interlibrary Cooperative	18,000,000	18,669,000	30,00,000	0	19,453,000
IV, Indian Libraries	(funded at 2 percent setaside of appropriations for LSCA I, II, & III)				
V, Foreign Language Materials	0	0	1,000,000	0	1,000,000
VI, Library Literacy	5,000,000	4,787,000	5,000,000	0	5,000,000
Higher Education Act, total	7,000,000	10,052,000	[3]	0	23,294,000
Title:					
II–A, College Library Resources	0	0	[3]	0	[4] 10,000,000
II–B, Training, Research	1,000,000	718,000	[3]	0	1,042,000
II–C, Research Libraries	6,000,000	5,744,000	[3]	0	6,252,000
II–D, Technology	0	3,590,000	[3]	0	[5] 5,000,000
VI, Sec. 607 Foreign Periodicals	0	0	[3]	0	[4] 1,000,000
Education Consolidation and Improvement Act Chapter [2] El/Sec Educ. State Block Grant [6]	529,337,000	508,439,000	[3]	575,000,000	575,000,000
National Commission on Libraries and Information Science	660,000	718,000	750,000	755,000	755,000
Center for Education Statistics (including library surveys)	8,900,000	20,953,000	[3]	29,469,000	29,469,000
National Library of Medicine (including Medical Library Assistance Act)	61,838,000	67,910,000	[3]	74,435,000	74,435,000

[1] Administration will submit $76 million legislative proposal to replace LSCA and HEA II.
[2] ALA generally recommends funding at amounts required to restore FY '88 cuts and adding a current services factor of 4.2 percent.
[3] Such same.
[4] For currently unfunded HEA library programs, ALA recommends amounts authorized for fiscal year 1987.
[5] Five million dollars is amount authorized for fiscal year 1987. Ed. Dept. received over 400 inquiries from potential II–D applicants, even before regs were issued, but estimates awarding only 89 grants from first-time 1988 funding of $3.6 million.
[6] Forward funded consolidation includes former ESEA IV–B School Library Resources and Instructional Equipment.

American Library Association, Washington Office, 202/547–4440. April 1988.

Also each year we receive recommendations from outstanding librarians from across the country in terms of how they benefit from Federal legislation. I would not take the time to read the entire statement by Dr. Vartan Gregorian of the New York Public Library, but he does make some important observations for the funding of the Library Service and Construction Act about the need for continued funding for the National Endowment of the Humanities, about how the Department of Education is doing through title II-C and title II-D, and finally he notes the fact that there is an issue of extreme importance to the Nation's libraries as well as to the public at large of free public access to Government information. This is an issue which I would like to take a minute to highlight.

Dr. Gregorian's letter continues: The current debate over the proposed privatization of the National Technical Information Service is an example of the significance of this issue. The National Technical Information Service complies, retains and makes available abstracts of the results of Government-sponsored research. The contracting out of this service would raise serious questions about public access and would force libraries to pay high costs for the basic right of the public to have free access to Government information. Federal funding for programs which support the flow of Government documents has been cut back too often in recent years. The consequences of further restrictions on access to Government information would be grave indeed. It is urgent that final legislative action be taken quickly on S. 1420 and H.R. 2160 which prohibits the further privatization of the National Technical Information Service.

I might note that S. 1420 and H.R. 2160 are in the trade bill. We have recognized the importance of the National Technical Information Service. We recognize it to the extent that we are prohibiting the contracting out of this service in this bill. This is contained in a letter by Dr. Gregorian of the New York Public Library.

Mr. Speaker, I include for the RECORD the entire letter instead of reading it.

The letter referred to follows:

THE NEW YORK PUBLIC LIBRARY,
New York, NY, April 19, 1988.

DEAR MEMBER OF CONGRESS: Some important changes are being proposed in the coming year in the federal programs that support libraries. For the first time no reduction is proposed for the humanities and the arts, and a modest federal role has been

adopted for the first time in support of libraries. While these changes are welcome, and while this will be a year of constraints on funding increases, it is critical that Congressional commitment to education and libraries continue to be realized through the enhanced appropriations needed to support these priorities. I write today to urge your attention to issues that must not be overlooked during the current year.

For each of the past six years the administration has proposed zero funding for the Library Services and Construction Act (LSCA), and yet Congress has continued and even increased appropriations. The coming year poses a new threat to this program: once again zero funding has been proposed for LSCA, while new legislation is being proposed for a reformulation of these library programs within the Department of Education. As a result, the vital programs and services that LSCA supports throughout the nation are in danger of extinction while this reauthorization process begins. At the New York Public Library, for example, grants through Title I of LSCA support outreach services to the unemployed, the blind and physically handicapped, the elderly and the illiterate, as well as such library projects as the publication of the Directory of Community Services in English and Spanish. There is a practical and growing need for services to these special populations, and the cessation of funding for these programs next year would be devastating. I urge the Congress to continue to fund existing LSCA programs in the coming year, regardless of the new direction these programs may eventually take.

For the first time in eight years, the Administration has not recommended cutting funding for the National Endowment for the Humanities, but has requested level funding. With this solid demonstration of commitment to and support of the humanities, I urge the Congress recommend additional funding for this agency in the coming year. The realization is growing that needs in the humanities are not just the needs of universities, but the needs of all Americans, which must be addressed immediately. The Humanities Projects in Libraries and Archives program at the NEH provides funds for very worthwhile projects that reach a great many people, and yet a 28% decrease in funding has been recommended for this program. Appropriations must be restored to at least the current level in order to support vital outreach projects in the nation's libraries. I must also emphasize the importance of additional funding for the Office of Challenge Grants, the program at NEH which supports the very institutions where the humanities thrive. This program has been enormously successful and remains in great demand. Expansion of funding will create more opportunities for other institutions to receive basic financial support.

A most critical question that faces the nation today is what the federal role in preserving our deteriorating heritage should be. The problem of books, periodicals, pamphlets and photographs printed on acid paper that are crumbling in our libraries is becoming a matter of increasingly broad national concern. The National Endowment for the Humanities is making major contributions to the nation's cultural life through the support of national projects that will save the record of the humanities from irreversible physical loss. Substantial increased federal commitment in this area would provide for the urgently needed expansion of preservation activities. The NEH has enormous opportunities to strengthen our intellectual resources, and to preserve our nation's rich history through an expanded preservation program. Important progress is being made through the funding of a number of large scale projects with national implications. I believe the federal role lies in supporting these national projects that will save information and make it broadly accessible through microfilming, and I urge your support for increased appropriations in the Office of Preservation at the National Endowment for the Humanities.

The Department of Education, through Title II-C, has been the source of funds for important projects that strengthen the nation's research libraries' resources. The Slavonic Division at The New York Public Library is currently conducting a project with Title II-C funds to restore, catalog and enhance its collection of Imperial Russian political, social and literary journals. It is distressing in the extreme to think that the important work being accomplished under this federal program would come to a halt if the administration's proposed elimination of all funding is not remedied.

The Department of Education's fledging program to improve library services developed under Title II-D, College Library Technology and Cooperation Grants, has been slated for zero funding in its second year of operation. The $3.6 million appropriated for this program in FY 1988 is creating keen competition among the many applicants to the program. The program will be highly cost-effective, since its goal is to expand access to resources and increase cooperation. I ask Congress to give special attention to the continued funding of both Titles II-C and II-D, with at least inflationary increases for FY 1989.

Another issue of extreme importance to the nation's libraries, as well as to the public at large, is free public access to government information. The current debate over the proposed privatization of the National Technical Information Service is an example of the significance of this issue. The NTIS compiles, retains and makes available abstracts of the results of government sponsored research; the contracting out of this service would raise serious questions about public access, and would force libraries to pay high costs for the basic right of the public to have free access to goverment information. Federal funding for programs which support the flow of government documents has been cut back too often in recent years. The consequences of further restrictions on access to government information would be grave indeed. It is urgent that final legislative action be taken quickly on S. 1420 and HR 2160, which prohibits the further privatization of the NTIS.

I also urge the Congress to support continued access to information by ensuring that *postal rates* be stabilized at at least current levels. There is a direct relationshiop between postal charges and library operations, and I ask that subsidized postal rates for libraries be a priority in the coming year.

Members of Congress have been traditional supporters of federal programs for libraries. With your leadership, the continuation and expansion of library services can be achieved in the coming year, demonstrating that a priority for education must go hand in hand with a priority for libraries. Your consideration is greatly appreciated.

Sincerely,

VARTAN GREGORIAN.

But I would like to continue to further elaborate on the point made by the letter with respect to the National Technical Information Service. This is just one library service that is being contracted out by the Reagan administration. This administration is wedded to an idelogical dogma about contracting out certain services, and libraries have been unfortunately caught up in this process. Libraries were insulted in my opinion because they were lumped in with janitorial services and cleaning services, and it is one of the few professional services that the Reagan administration placed on a list of 14 experimental contracting out or privatization fundings. They have continued despite protests to contract out services including the National Technical Information Services to private companies that in no way are going to be able to carry out the responsibilities of these particular agencies. We are crippling our research and development capacity at a critical time. Some of the libraries that have been contracted out have been contracted out to foreign firms, firms that are opened by foreign companies, and the kind of activity that they are responsible for certainly impacts on our commercial activities and maybe even one day on activities of concern to our national security.

This whole process of privatization has been a part of a pattern in the Reagan administration of not understanding the value of library services, either library services for the public in general or for researchers and professionals. We have had an assault on library related activities by this administration. Numerous publications that libraries are depending upon have been eliminated. Many of the publications that libraries use have been privatized. They have been turned over to private companies, and libraries are forced to pay three times as much for certain very vital handbooks and reference tools that are produced by these private companies at a profit. Then they have to pay when the same products are being produced by the Federal Government. Parts of the Government Printing Office are being privatized and contracted out.

Mr. Speaker, we are on a binge, an ideological binge of contracting out which is hurting libraries very greatly, and, as they hurt libraries, of course what is happening is of course a great impact on the whole educational process. The cost of doing businesss for libraries goes up as we contract out these functions. The quality of the product, the quality of the service, goes down, and we suffer as a result.

So, the contracting process unfortunately is still running rampant. Furtunately, and I hope we do pass the trade bill, the National Technical Information Service will be saved by

Congress if the trade bill is passed as it is presently. That act has a portion which prohibits the contracting out of a National Technical Information Service.

And finally I would like to take a moment to note that the theme of this year's National Library Week is the need for everybody to have a library card, especially young people. September is being designated as National Library Card Sign-Up Month. Today I have introduced a bill at the request of the American Library Association and other groups which designates September 1988 as National Library Card Sign-Up Month. As I said before, this is a gimmick, it is a ceremonial kind of thing, it is a public relations kind of thing, but it also has great value for young people. It is important that every young person see himself as not being complete unless they have a library card, not being complete unless they have the library habit, the habit of going to the library and appreciating the kinds of information that can be found there. So for that reason we are introducing today the national library card sign-up bill. It designates September 1988, and that will be a great campaign to try to get all of the young people across the country into the position of having library cards.

Mr. WEISS. Mr. Speaker, I would like to thank my colleague from New York, Congressman OWENS, for organizing this special order, giving us the opportunity to express our support for libraries and the myriad services which they provide. It is particularly appropriate that Mr. OWENS manage this special order because, as the only professional librarian ever elected to Congress, his perspective is unique.

We all appreciate the vital role assumed by libraries in our communities, schools, and colleges. They are a place to congregate, to learn, to exchange ideas and information. Few of us are even aware of the extent of their services to the community and the Nation. Indeed, great nations are judged, in part, by the strength of their collections.

Libraries provide early access for young children to the joy of learning. They provide a constructive afterschool alternative for older children. Through literacy and language programs, they provide a vital service to nonreaders and non-English speakers. Libraries are a second home for university students and scholars and a pleasant gathering place for seniors. And because most libraries are public, they are available to all.

Support for libraries is predominantly assumed at the State and local level, but Federal funding is crucial in defining and expanding the scope of services libraries provide. It is imperative that we continue to uphold that Federal commitment.

For the past 6 years, President Reagan has requested zero funding for the main Federal program serving libraries, the Library Services and Construction Act [LSCA]. In spite of the President's misguided proposals, Congress has continued and even increased appropriations for the LSCA during that time. I am hopeful that Congress will again maintain this program, which represents only a miniscule portion of the Federal budget.

Funds reaching New York City through title I of the LSCA support outreach services to the unemployed, the blind and physically handicapped, the elderly and the illiterate. Without sufficient funding, the libraries in New York and elsewhere will have a much more difficult time reaching these target populations, and, in turn, the potential contributions of these people to our Nation will be drastically reduced.

Another important source of Federal support for libraries is through the National Endowment for the Humanities. I was very pleased to note that for the first time in 8 years, President Reagan has not requested any cuts in the NEH budget. His level funding request is a big step forward for a man who has never before acknowledged the significance of federal cultural funding to the well-being of our Nation. But, unfortunately, when the funding proposal for the NEH is broken down, we see that the Humanities Projects in Libraries and Archives Program has been slated for a 28-percent decrease in funding. I would therefore recommend that funding for this program at least be maintained at its current level, and funding for the whole NEH be increased.

Whereas libraries bring people together, they themselves are linked together through extensive networks of shared resources. Vital to that service, is the Postal Service's Revenue Forgone Program. Without these reduced postal rates, which enable libraries to send books and materials to other libraries, funds would have to be redirected from other programs. Libraries would have to spend more money on postage and less on the acquisition and maintenance of materials and the provision of vital services to the community. Continued increases in postal rates and cuts in the revenue forgone appropriation create a serious threat to libraries and must therefore be limited.

Also of concern to librarians are potential restrictions on access to Government information and the continuing use of libraries by the FBI to track the activities of suspected foreign spies. We must not allow the free flow of information to be curtailed or force librarians to act as Government agents.

Since the founding days of our Nation, the Congress has been a strong supporter of libraries and library services. During this National Library Week, I am pleased to join my colleagues in reaffirming that support and extending congratulations and thanks to our Nation's librarians, without whose service we as a nation would be greatly diminished.

Mr. GOODLING. Mr. Speaker, this is National Library Week and I would like to take a few minutes to pay tribute to one of the greatest sources of knowledge known to man—our public libraries.

I don't know of a better place for people of all ages to go to gather information or just to choose a book to read for pleasure. School children and college students use libraries to research reports; retirees go to libraries to look up information on faraway places they are free to visit; and other people just go to libraries to read and to satisfy their quest for knowledge.

But libraries are not just places to find books and do research. Some of the libraries in my congressional district provide space for tutors who help people learn to read and write, and provide many of the materials used by tutors and their students. People can't enjoy books if they can't read. Therefore, I find it highly commendable that these libraries are joining in the battle against illiteracy.

Other libraries in my district have developed programs to bring regular and large print books, as well as books on cassette, to the homes of older adults who are homebound and unable to come to their public library. These same libraries deliver books to senior apartment complexes, nursing homes, and adult day care centers.

While Federal support of library programs is limited, it is, nevertheless, important. Without it, libraries might have to charge for services they now provide for free, such as the delivery of books to homebound individuals.

One prime example of the importance of Federal library programs is the development of FAT CAT, which is a computerized catalog of public libraries in York and Adams Counties in my congressional district. People who are trying to locate a specific book can use the computer. If the book is not at their library, it can be borrowed through the interlibrary loan system. The development of FAT CAT has assisted in providing a greater selection of books to citizens throughout my congressional district. It is one more project which probably would not exist if it were not for the availability of grants under the Library Service and Construction Act.

Mr. Speaker, I encourage my colleagues to join me in paying tribute to libraries throughout our great Nation. They truly provide a service which cannot be duplicated.

Mr. GREEN. Mr. Speaker, I should like to thank my colleague from New York, Mr. OWENS, for his leadership in sponsoring this special order on libraries and for providing the opportunity to say a few words.

Who can doubt the importance of our Nation's libraries in enriching the individual's life and in fostering the educational and cultural growth of the country? For the child who has just learned to read, the student conducting post-graduate research, the senior citizen on a limited income who can't buy books, or the adult who needs a how-to book on carpentry or plumbing, our Nation's libraries have stood with their doors open to serve its citizens' needs. It is fitting that we pay tribute to our libraries during National Library Week and that we renew our commitment to their well-being.

Federal funding of libraries is modest, yet every year for the past 6 years the administration has called for zero funding for the Library Services and Construction Act. Under LSCA libraries throughout the country have been able to provide special services such as literacy programs, job information centers, public library outreach, public library construction and renovation, library automation and special services to the blind, physically handicapped and the elderly. In the past strong bipartisan support has saved this program and I shall support its continuation again this year.

The administration has again proposed elimination of the postal revenue forgone subsidy. Eliminating this subsidy would critically impair the ability of libraries to distribute educational and informational material to the public. If the revenue forgone postal subsidy is eliminated, our libraries would have to devote to postage money now spent on books and other library resources. In New York City, the New York Public Library has estimated that elimination of revenue forgone funding would add over $1 million in additional postage costs.

A third area of concern is the proposed elimination of funding under title II-C of the Higher Education Act, which provides grants to major research libraries to maintain and strengthen their collections and to make their holdings available to other libraries whose users have need for research materials. The Slavonic Division of the New York Public Library is currently using title II-C funds for a project to restore, catalog and enhance its collection of Imperial Russian political, social, and literary journals. To think that such a significant project and others like it around the country, would be severely curtailed if we fail to fund it, is distressing and should not be allowed to happen.

We face difficult choices in our attempts to reduce the budget deficit. However, the strength of our Nation depends in large measure on its ability to support the educational resources that benefit all of its people. Let's continue to give our full support to our libraries.

Mrs. PATTERSON. Mr. Speaker, I am pleased to join many of my colleagues in observing the 31st annual "National Library Week."

Our libraries are not just places to find books and research information. They also provide story hours, films, live theater, crafts, and many other programs which enhance a child's desire to learn and read. This positive impact is evident in statistics that show that over 3.4 million books were checked out by children in 1987.

In my State of South Carolina, the State library conducts a statewide annual summer reading program. Of the 36,000 children who participated in the program last year, 4,551 were from my district. This is an example of the meaningful programs our libraries provide.

This week is the perfect time to urge the continuation of appropriate funds to the Library Services and Construction Act in order to provide needed financial assistance to fund special library programming, to purchase needed materials, and to extend and improve services to rural communities, the elderly, and the disadvantaged.

Our libraries are essential to laying the foundation for tomorrow. They are the repository of our past and the basis of our future.

Mr. Speaker, I am pleased to have an opportunity to join the gentleman from New York in recognizing the contributions of our Nation's libraries.

Mr. OBERSTAR. Mr. Speaker, throughout our 50 States, in major urban centers, small towns and peaceful neighborhoods, public libraries quietly provide access to the world of information.

Libraries are where our dreams are stored and shared, where children first explore the secrets of the written word; libraries are the recordkeepers of the daily life of our world.

In my State of Minnesota, nearly 4 million people make use of 339 public library buildings and 26 mobile units. Over 700,000 students are served by the 1,500 library media centers in the public schools. Academic, technical, and specialized libraries serve thousands more readers daily.

Minnesota's public and academic libraries have more than 37 million items of information resources. With a single library card, Minnesotans can have access to the resources of public, school, college and university libraries throughout the State through the interlibrary loan system.

In 1986, Minnesota's public libraries cost the tax-paying public just over $64 million. That is only $16.23 per person for the entire year, truly a bargain.

Local taxes fund the bulk of public library expenditures, but Federal dollars play an important role in library operations. The Library Services and Construction Act provides money for the interlibrary loan program, bookmobiles, and specialized services for the blind, disabled, and institutionalized persons. Titles II-A, II-B, and II-C of the Higher Education Act provide Federal support for college and research libraries.

These programs demonstrate the strong commitment the Federal Government has made to our Nation's libraries. Besides supporting important services, the Federal dollars also act as a catalyst for further State and local funding.

This week we celebrate National Library Week. It is a time to reflect on what our libraries mean to our community, State, and Nation. Libraries are both a local asset and a national treasure. They are the storehouses of our knowledge, and the keepers of our dreams.

Mr. DERRICK. Mr. Speaker, I first would like to commend the gentleman from New York [Mr. OWENS], for his leadership in sponsoring this special order on libraries today. It is very important that we call attention during National Library Week to the outstanding services our libraries provide.

Libraries are vital to our educational system. In South Carolina, illiteracy is a major social and economic problem. Nearly 26 percent of adults over 25 years of age are considered to be functionally illiterate. Over the years, the South Carolina State Library has encouraged public libraries to become involved in local efforts to eradicate illiteracy. Library services and Construction Act, title I funds have been used for this purpose.

Although a single definition of literacy does not exist, functional literacy is generally understood to be the ability to read, write, speak, listen, compute and solve problems in situations that confront adults in everyday life. I am pleased that our public libraries see this as an area worthy of their attention. As libraries themselves are becoming more sophisticated, such as using computers to replace card catalogs, they need to step back and try to bring services to the nonuser.

In my travels through my district, I have seen many positive changes in libraries in the past few years. LSCA has been a catalyst for many of them. I have seen a store building renovated for use as a library in my home county of Edgefield. This summer construction should begin on converting an historic elementrary school into the Aiken County Library. These and other libraires have had books purchased with LSCA funding. But of what use will these buildings and books be if our citizens cannot read.

There are an estimated 445,652 South Carolinians who are considered illiterate. They are reason enough to continue funding of LSCA and other library programs.

Mr. Speaker, I hope that this body will continue to give its full support to our libraries.

Mr. MARTINEZ. Mr. Speaker, I rise today during "National Library Week" to honor our Nation's librarians and to reaffirm the important role that libraries play in our national life.

The latter part of the 20th century has truly become the age of information. Whole industries are dedicated to producing, analyzing, and disseminating information. The young men and women of this country need quality educations to be able to contribute to our increasingly complex and technical society. And most importantly, a free society such as ours must make informed public debate on national issues possible by encouraging the widest possible dissemination of knowledge.

The administration has consistently sought to decrease the public's access to library services. Through circular A-130, the Office of Management and Budget has directed that formerly free or inexpensive Federal Government information be made available to the public only through expensive commercial vendors. Funding for the Library Services and Construction Act, which seeks to increase library accessibility to the disadvantaged, the handicapped, and those living in rural areas, has come under fire from the administration for each of the last 7 years.

I say no. The American people must have access to information about their Government. Our libraries must reach out to everyone, including the disadvantaged and the handicapped. Those living in rural areas must not be denied the opportunity to learn simply by virtue of where they live.

In my home district we have a special program called the Community Access Library Line. This is a multilingual information and referral service that assists callers in locating human services, community organizations, community events and government officials and agencies. The program serves 15 million people in the southern California area and receives 40,000 questions annually. Library Services and Construction Act funds initiated this program.

The Los Angeles Public Library System has a program called Older Americans Special Information Service [OASIS]. This program provides inhome services to shut-ins to residents in convalescent homes or other care centers. Again, Library Services and Construction Act funds provided the seed money.

The Library Services and Construction Act has allowed libraries all throughout the United States to create similar programs to make our libraries accessible to all who want to use them. This is essentially a State and local concern, but the Federal Government has an

obligation to help these governments meet their obligations to their citizens. We have a responsibility to continue our commitment to the Library Services and Construction Act.

In this Age of Information, we must maintain our commitment to our libraries. In this way we maintain our commitment to the people of this country who need access to information; and, during National Library Week, we honor our librarians.

Mr. DE LA GARZA. Mr. Speaker, it is indeed an honor to be able to participate in today's special order. I say this since one of my foremost priorities has always been the education of our Nation's youth—our future. We must provide for their education as well as the resources utilized to advance it—namely our Nation's libraries. Within their walls lie the seeds of knowledge which once sewn result in a bountiful harvest.

This is said mindful that the first high school graduating class of the 21st century will enter first grade this September. For them the world is a very different place than that into which I was born. Technology has rapidly advanced making many things never dreamed of or thought possible reality. Equally as exciting are all of the choices that now exist making our country a land of opportunity for every child.

Only with knowledge, however, can our youth fulfill their potential and that is what makes our Nation's libraries so invaluable. They are our treasure houses. They contain the world's heritage, and what is found in the past will serve as the basis of the progress to come in the future.

As a country we are indeed fortunate to have access to these services, but we must bear in mind that they too need our support. As we celebrate "National Library Week" I want to take this opportunity to pledge mine.

Mr. HAMMERSCHMIDT. Mr. Speaker, I join with my colleagues today in observing National Library Week and in paying tribute to the men and women who serve our Nation as librarians.

I think all of us in this Chamber recognize the vital role which libraries play in our society. As President Reagan stated in his observance of "National Library Week," "a well-educated citizenry is critical to the health of any republic." Libraries are crucial to that education process.

We have seen the role of libraries greatly expand over the last few decades. Technological advances have enabled these institutions to increase their information services as never before. National Library Week affords those of us in Congress the opportunity to reaffirm our commitment to libraries and to provide all Americans equal opportunity for access to the information required to meet their education, vocational, and recreational needs.

Mr. Speaker, I have long been a supporter of our Nation's libraries and in that context have had the opportunity to work with many librarians. One of the most prominent librarians I have had the pleasure to work with is Dr. Bessie Moore of Little Rock, AR. Much of the credit for the public library system we enjoy in Arkansas today can be attributed to Dr. Moore and the numerous years of hard work that she has given to our State. Today at age 85 she continues to work tirelessly on both the State and national level. Dr. Moore currently serves on the National Commission on Libraries and Information Services, a commission on which she has held a position since 1970.

Additionally, at this time I would like to reiterate my support for House Joint Resolution 90, which calls for a White House Conference on Libraries and Information Services. Now that the conferees have been named, I would urge my colleagues to take swift action and resolve our differences with the Senate so that we can move forward with this important conference.

Mr. SPRATT. Mr. Speaker, I am pleased today to join in recognizing the significant contributions of public libraries. Throughout this week, which is "National Library Week," efforts are being made through various events to increase public awareness of the many services that public libraries provide.

Cooperation is essential among libraries, and it has been a tradition amoung South Carolina libraries. However, since 1979, the South Carolina State Library has devoted considerable resources and energy to the development of a statewide plan for better cooperation, automation, and resource sharing. In 1986, the State library installed an integrated library system to serve as the central component of the South Carolina Library Network. With a special State appropriation, each county library was provided a microcomputer to access the network. This enabled residents of the entire State to have access to the resources of the State library's research collection. Access was soon extended to academic and technical college libraries. This year two pilot projects are testing the feasibility of school library participation.

It is gratifying to know that funds from title III of the Library Service and Construction Act [LSCA] have contributed to this effort. As the network gradually adds new users and new functions, LSCA will play an even more significant role. The future will see the eventual linking of other libraries. As more libraries automate, their book collections will potentially be available to others, thus providing all South Carolinians with better library service.

I strongly support our public libraries. I hope that the activities held during "National Library Week" will help to inform the public of the vital role these institutions play in meeting the needs of the residents in our communities.

Mr. FAUNTROY. Mr. Speaker, I am pleased to join with my distinguished colleague Congressman MAJOR R. OWENS, who is himself an accomplished librarian, in this special order celebrating National Library Week.

I am delighted that Congressman OWENS is once again bringing to the forefront the important role that public library services play in contributing to the quality of our national life. Although public library services are predominantly a function of State and local jurisdictions, the Federal Government's impact is profound in determining whether citizens have access to information resources.

One of the crucial vehicles for Federal assistance to our Nation's libraries is the Library Services and Construction Act [LSCA]. While the amount of dollars provided is not extravagant, the LSCA allocation is vital to library programs targeted to support programming which otherwise would not receive sufficient funding. For example, the District of Columbia received approximately $596,500 in 1988 from the LSCA. Such assistance helps to provide improved library services for the elderly, the economically disadvantaged, and other residents who may have specialized needs for access to library services, as well as for the public in general. We must certainly preserve and strengthen the Federal commitment to providing such essential funds for enhancing public education through library services.

Again, I want to salute Congressman MAJOR OWENS, a long-distance runner for educational opportunity in this country, for riveting our attention upon the necessity of public library services accessible to all Americans.

Mr. HEFNER. Mr. Speaker, it is my great pleasure to salute those men and women and the libraries they represent in paying tribute to National Libraries Week.

The education of our children is crucial for the future of our Nation and libraries play a vital role in the development of these young minds. The information and resources available at the libraries in my district is excellent and is widely used by students and the citizens at large.

This would not be the case if it were not for the support of the grant programs available through the Library Services and Construction Act. This program has been responsible for the revitalization and expansion of many facilities in my district, State, and across the Nation. I certainly support its reauthorization.

This program has made it possible to construct modern, well furnished facilities and provide new automated technologies which bring timely important information to local libraries for use by our people.

Librarians themselves are among the most helpful people any of us encounter in our daily lives, and they are an important and vital link between the citizens and accurate, timely information and resources which is essential for good citizenship.

I am grateful for the opportunities provided by libraries. The library is the cornerstone of any learned society.

Mr. MAVROULES. Mr. Speaker, the library's role in society continues to grow and expand. Once thought of as simply a place to borrow books, it is now an extensive reference center, study hall, information center, and even a gathering place. Although the role of the library is changing, its purpose has essentially stayed the same: to provide and make available a variety of books and materials to the public for educational needs and enjoyment. As a strong advocate of education, I am extremely proud and happy to celebrate National Library Week and would like to recognize and highlight the importance of public libraries in our country.

Although Federal funding for libraries is minimal, the appropriated money goes toward essential programs and services that may otherwise be overlooked. The funding we provide opens up the library to the entire public and broadens the availability of research materials through such means as: interlibrary cooperative networks, easy accessibility to various research materials, and more communication between separate libraries.

Today, the library is used extensively by people of all ages. Starting as elementary school students, many children spend time at the public library reading and borrowing books. At many libraries, younger children have access to computers, movies, and film strips: all important accessories to the educational process. As the child grows older, the library becomes a more serious place; a place where invaluable reference and study materials are available. Then, when studying is no longer a part of a person's life, the library can become a social center: a place where movies are shown, books are read, friends have discussions, and people relax. The library is one of the few public places where people of all ages can use and enjoy what is available.

Like much of the United States, I too take advantage of the libraries resources. More recently, the Library of Congress has proven to be not just a place where books are stored, but the most extensive information center in our country. I think my colleagues and I recognize and appreciate how much the library contributes to the Government: for information, research, and study purposes.

Again, I am happy to be celebrating National Library Week. As we move into the future, libraries are becoming essential and wanted institutions in our society. In each town, libraries are being remodeled, expanded upon, and updated. My colleagues, please join me in this worthy recognition of the public library.

Mr. KOSTMAYER. Mr. Speaker, as you know, this is "National Library Week," and I would like to remind my colleagues of the importance of Federal funding for libraries.

Although public library services are primarily a State and local responsibility, the Federal Government provides aid through the Library Services and Construction Act for many support programs and services which otherwise could not, or would not be funded adequately. Therefore, Federal aid has a critical impact on the quality and breadth of library services available to Americans.

Libraries play an increasingly vital role by linking our scientists, business people, students, and others with the tremendous wealth of information currently available. I can only imagine how difficult my own job would be without the support of the Library of Congress and its staff. We must continue to expand our library system, and improve already existing libraries and their resources so as to serve all Americans more efficiently.

Access to public libraries by the elderly, disadvantaged, and handicapped must be insured. We cannot deny these members of our society the opportunity to enrich themselves through the resources available at our libraries just because they may require services which involve extra effort on the part of library staffs, special materials and equipment, or building renovations.

Mr. Speaker, the Congress and State and local governments must continue to extend and improve services to rural communities which are unserved or underserved by libraries. This can be done through innovative communications technology. By utilizing interlibrary cooperative networks, we can link our Nation's libraries across city, county, and State lines, and greatly increase the base of information available to library users.

American libraries play a significant part in the advancement of technology, the support of research, the education of our youth, and the enrichment of our society as a whole. Mr. Speaker, I'm certain we would all agree that the maintenance and development of our Nation's libraries is crucial to America's future, and I join librarians across the country in celebrating National Library Week.

GENERAL LEAVE

Mr. OWENS of New York. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of my special order tonight.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. PRICE (at the request of Mr. FOLEY), for today and the balance of the week, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mrs. BENTLEY) to revise and extend their remarks and include extraneous material:)

Mr. JEFFORDS, for 60 minutes, on April 27.

Mr. MICHEL, for 5 minutes, today.

Mr. HAMMERSCHMIDT, for 5 minutes, today.

Mr. PETRI, for 60 minutes, on April 26.

Mr. PETRI, for 60 minutes, on April 27.

Mr. PETRI, for 60 minutes, on April 28.

Mr. PETRI, for 60 minutes, on May 3.

Mr. PETRI, for 60 minutes, on May 4.

Mr. PETRI, for 60 minutes, on May 5.

Mr. GINGRICH, for 5 minutes, today.

(The following Members (at the request of Mr. DONNELLY) to revise and extend their remarks and include extraneous material:)

Mr. STRATTON, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. RODINO, for 5 minutes, today.

Mr. SCHEUER, for 60 minutes, on April 21.

Mr. RODINO, for 60 minutes, on April 26.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mrs. BENTLEY) and to include extraneous matter:)

Mrs. MORELLA.
Mr. SOLOMON.
Mr. HYDE.
Mr. WELDON.
Mr. MOORHEAD.
Mr. FISH.
Mr. WOLF.
Mr. KEMP.
Mr. DENNY SMITH.
Mr. RITTER.
Mr. COUGHLIN.
Mr. GALLO.
Mr. MYERS of Indiana.
Mr. GREEN.
Mr. MCGRATH.
Mr. MCCOLLUM.

(The following Members (at the request of Mr. DONNELLY) and to include extraneous matter:)

Mr. ROSTENKOWSKI.
Mrs. BOXER.
Mr. TRAFICANT.
Mr. TALLON in two instances.
Mr. KOSTMAYER.
Mr. HOYER.
Mr. MONTGOMERY.
Mr. TORRICELLI in two instances.
Mr. DORGAN of North Dakota.
Mr. TORRES.
Mr. FORD of Michigan.
Mr. SWIFT in two instances.
Mr. JONES of North Carolina.
Mr. LEVIN of Michigan.
Mr. WYDEN.
Mr. FASCELL.
Mr. LOWRY of Washington.
Mr. DWYER of New Jersey.
Mr. MINETA in two instances.
Mr. ECKART.
Mr. WAXMAN.
Mr. ASPIN.
Mr. SKAGGS.
Mr. APPLEGATE.
Mr. RANGEL.
Mr. PEPPER in two instances.
Mr. ST GERMAIN.
Mr. LELAND.
Mr. MOAKLEY.
Mr. CLEMENT.
Ms. KAPTUR.
Mr. BILBRAY.
Mr. DIXON.
Mr. ALEXANDER.
Mr. STUDDS.
Mr. HAMILTON.
Mr. MARTINEZ.
Mr. WALGREN.
Mr. EDWARDS of California.
Mr. GUARINI.
Mr. ATKINS.

SENATE ENROLLED BILL AND JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled bill and a joint resolution of the Senate of the following titles:

S. 1609. An act for the relief of James P. Purvis, and

S.J. Res. 235. Joint resolution deploring the Soviet Government's active persecution of religious believers in Ukraine.

JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following date present to the President, for his approval, joint resolutions of the House of the following titles:

On April 19, 1988:

H.J. Res. 527. Joint resolution to designate the week of April 17, 1988, through April 24, 1988, as "Jewish Heritage Week";

H.J. Res. 373. Joint resolution to designate May 1988 as "National Trauma Awareness Month"; and

H.J. Res. 347. Joint Resolution recognizing the identical plaques initiated by Sami Bandak created by Margareta Hennix and Ginvanni Bizzini, and depicting the *Calmare Nyckel*, the ship that brought the first Swedish settlers to North America, as significant symbols of the "Year of New Sweden"; and providing for the placement of one of such plaques at Fort Christina in the State of Delaware.

ADJOURNMENT

Mr. OWENS of New York. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 49 minutes p.m.) under its previous order, the House adjourned until Thursday, April 21, 1988, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

3463. A letter from the Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting notification of the decision to convert the Public Works functions at the Naval Air Station, Jacksonville, FL; to contractor performance as the most efficient method of accomplishment, pursuant to 10 U.S.C. 2304 nt; to the Committee on Armed Services.

3464. A letter from the Secretary of Education, transmitting a draft of proposed legislation to improve the contribution of libraries to the education of economically disadvantaged or handicapped persons, to increase access to library materials through resource sharing, to support research and assessment necessary to improve library services, and for other purposes; to the Committee on Education and Labor.

3465. A letter from the Secretary of Commerce, transmitting the annual report on the activities of the U.S. Travel and Tourism Administration for fiscal year 1987, pursuant to 22 U.S.C. 2123a; to the Committee on Energy and Commerce.

3466. A letter from the Administrator, Energy Information Administration, Department of Energy, transmitting the third annual summary report on coal imports, pursuant to 42 U.S.C. 7277(a); to the Committee on Energy and Commerce.

3467. A letter from the Director of Administration, National Labor Relations Board, transmitting notification of the proposed alteration of Federal records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

3468. A letter from the Secretary, Federal Trade Commission, transmitting the Commission's report of its activities under the Freedom of Information Act for calendar year 1987, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

3469. A letter from the Deputy Associate Director for Collection and Disbursements, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

3470. A letter from the Deputy Associate Director for Collection and Disbursements, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

3471. A letter from the Acting Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting the report on drug control by the Bureau of Justice Assistance for Fiscal Year 1987; the implementation of the Formula Grant Program based on each State's drug strategy; a wide range of Discretionary Grant Programs developed and implemented, pursuant to 42 U.S.C. 3796m; to the Committee on the Judiciary.

3472. A letter from the Director, Office of Management and Budget, transmitting a draft of proposed legislation to amend title 39, United States Code, to provide a method not requiring appropriations to continue favored rates of postage for certain mail which affords public benefits, to curb the misuse of favored rates to mail advertising material, and for other purposes; to the Committee on Post Office and Civil Service.

3473. A letter from the Administrator of Veterans Affairs, Veterans Administration, transmitting a draft of proposed legislation to amend title 38, United States Code, to authorize multiyear contracts in certain cases; to the Committee on Veterans' Affairs.

3474. A letter from the Secretary of Health and Human Services, transmitting the Department's annual report on Medicare for fiscal year 1985, pursuant to 42 U.S.C. 139511(b); jointly, to the Committees on Ways and Means and Energy and Commerce.

3475. A letter from the Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs), transmitting a draft of proposed legislation to amend titles 5, 10, 37, and 38, United States Code, to provide members of the Senior Reserve Officers' Training Corps coverage for adequate care and compensation for disabilities incurred during training; jointly, to the Committees on Armed Services, Veterans' Affairs, and Education and Labor.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. CONYERS: Committee on the Judiciary. H.R. 3193. A bill to provide for the acquisition and publication of data about crimes that manifest prejudice based on race, religion, sexual orientation, or ethnicity (Rept. 100-575). Referred to the Committee of the Whole House on the State of the Union.

Mr. ROSTENKOWSKI: Committee of conference. Conference report on H.R. 3 (Rept. 100-576). Ordered to be printed.

Mr. PEPPER: Committee on Rules. House Resolution 430. Resolution waiving all points of order against the conference report on the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, and against the consideration of such conference report (Rept. 100-577). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WALGREN:

H.R. 4417. A bill to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1989, and for other purposes; to the Committee on Science, Space, and Technology.

H.R. 4418. A bill to authorize appropriations for the National Science Foundation for fiscal years 1989 and 1990, and for other purposes; to the Committee on Science, Space, and Technology.

H.R. 4419. A bill to authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974; to the Committee on Science, Space, and Technology.

By Mr. DREIER of California:

H.R. 4420. A bill to amend title 18, United States Code, to provide for mandatory imprisonment for using or carrying an imitation firearm to commit a Federal crime of violence or Federal drug trafficking crime; to the Committee on the Judiciary.

By Mr. SCHUMER:

H.R. 4421. A bill to require the Secretary of the Interior to rehabilitate the Canarsie Pier located in the Gateway National Recreational Area, to prepare a plan to rehabilitate the electrical systems at Floyd Bennett Field and Fort Tilden located in such area; and to make emergency repairs to such systems; to the Committee on Interior and Insular Affairs.

By Mr. APPLEGATE:

H.R. 4422. A bill to amend the Appalachian Regional Development Act of 1965 to include Columbiana County, OH, as part of the Appalachian region to the Committee on Public Works and Transportation.

By Mr. APPLEGATE (by request):

H.R. 4423. A bill to amend title 38, United States Code, to increase the rates of dependency and indemnity compensation [DIC] payable to surviving spouses of veterans who have died from service-connected disabilities; to the Committee on Veterans' Affairs.

By Mr. DIOGUARDI (for himself and Mr. DORNAN of California):

H.R. 4424. A bill to amend the Higher Education Act of 1965 to exclude the value of personal homes from the computation of need for student assistance programs; to the Committee on Education and Labor.

By Mr. MICHEL (by request):

H.R. 4425. A bill to amend title VIII of the Act commonly referred to as the Civil

Rights Act of 1968 to provide the Secretary of Housing and Urban Development and the Attorney General of the United States with additional authority to enforce rights to fair housing, and for other purposes; to the Committee on the Judiciary.

By Mr. DONNELLY (for himself, Mr. MCGRATH, Mr. COYNE, Mrs. KENNELLY, Mr. DOWNEY of New York, Mr. ANTHONY, Mr. RANGEL, Mr. RUSSO, Mr. GUARINI, Mr. JENKINS, Mr. FLIPPO, Mr. FORD of Tennessee, and Mr. DAUB):

H.R. 4426. A bill to amend the Internal Revenue Code of 1986 to create incentives for fair employment in Northern Ireland, and for other purposes; to the Committee on Ways and Means.

By Mr. FRANK (for himself, Mr. MAZZOLI, Mr. BERMAN, and Mr. MORRISON of Connecticut):

H.R. 4427. A bill to amend the Immigration and Nationality Act with respect to the grounds for exclusion and deportation of aliens; to the Committee on the Judiciary.

By Mr. GUARINI (for himself, Mr. GIBBONS, Mr. FLORIO, Mr. FAZIO, Mr. LELAND, Mr. FRANK, Mr. DWYER of New Jersey, Mr. SHAW, Mr. TORRICELLI, Mr. GALLO, and Mr. SCHEUER):

H.R.4428. A bill to extend H-1 nursing visas for an additional year and to permit additional immigrant visas numbers to be issued for nurses in nursing crisis areas; to the Committee on the Judiciary.

By Mr. GUARINI (for himself, Mr. FLORIO, Mr. SCHEUER, Mr. RODINO, Mr. ROE, Mr. HUGHES, Mr. DWYER of New Jersey, Mr. TORRICELLI, Mr. RINALDO, Mr. SCHUMER, Mr. MOLINARI, Mr. GARCIA, and Mr. WEISS)

H.R. 4429. A bill to direct the Secretary of Commerce to conduct a study to determine methods of enhancing interstate and foreign commerce in New York City and northern New Jersey; jointly, to the Committees on Public Works and Transportation and Energy and Commerce.

By Mr. HYDE (by request):

H.R. 4430. A bill to authorize appropriations for fiscal year 1989 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes; to the Permanent Select Committee on Intelligence.

By Mr. MCCOLLUM:

H.R. 4431. A bill to amend title 18, United States Code, to provide civil and criminal forfeitures for certain offenses; jointly, to the Committees on the Judiciary and Post Office and Civil Service.

By Mr. MATSUI (for himself, Mr. AKAKA, Mrs. BOXER, Mr. DYMALLY, Mr. EDWARDS of California, Mr. LOWRY of Washington, Mr. MINETA, Mr. PASHAYAN, and Ms. PELOSI):

H.R. 4432. A bill to amend title 13, United States Code, to require certain detailed tabulations relating to Asian Americans and Pacific Islanders in the decennial censuses of population; to the Committee on Post Office and Civil Service.

By Mr. MURTHA (for himself, Mr. MCDADE, Mr. KANJORSKI, Mr. GRAY of Pennsylvania, Mr. GAYDOS, Mr. COYNE, Mr. KOLTER, Mr. SCHULZE, Mr. YATRON, and Mr. WALGREN):

H.R. 4433. A bill to designate the U.S. Post Office Building in Jeanette, PA; as the "John Dent Post Office Building"; to the Committee on Post Office and Civil Service.

By Mr. SCHULZE (for himself, Mr. HYDE, and Mr. BROWN of Colorado):

H.R. 4434. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit to parents for dependents under age 6, that the earned income credit shall not apply to families having such a dependent, and that the dependent care credit shall not apply with respect to such dependents; to the Committee on Ways and Means.

By Mr. DENNY SMITH:

H.R. 4435. A bill to amend the Controlled Substances Act to provide for a mandatory death penalty for certain serious drug offenses; jointly, to the Committees on Energy and Commerce and the Judiciary.

By Mr. SWIFT (for himself and Mr. THOMAS of California):

H.R. 4436. A bill to authorize appropriations for the Federal Election Commission for fiscal year 1989; to the Committee on House Administration.

By Mr. WYDEN:

H.R. 4437. A bill to provide additional enforcement authority for the Forest Service to deal with the production of controlled substances on the national forest system, and for other purposes; jointly, to the Committees on Interior and Insular Affairs, Agriculture, and the Judiciary.

By Mr. WYDEN (for himself, Mr. FLAKE, and Mrs. SAIKI):

H.R. 4438. A bill to enhance the operation of the National Credit Union Administration Board; to the Committee on Banking, Finance and Urban Affairs.

By Mr. HEFLEY:

H.J. Res. 548. Joint resolution proposing an amendment to the Constitution of the United States to provide for 4-year terms for Representatives and to limit the number of consecutive terms Senators and Representatives may serve; to the Committee on the Judiciary.

By Mr. OWENS of New York (for himself, Mr. GOODLING, Mr. SOLARZ, Mr. CARDIN, Mr. BROOMFIELD, Mr. TRAFICANT, Mr. SYNAR, Mr. MCGRATH, Mr. SHARP, Mr. MAZZOLI, Mr. WEISS, Mr. KOSTMAYER, Mr. FAUNTROY, Mr. MCEWEN, Mr. SKELTON, and Mr. SLATTERY):

H.J. Res. 549. Joint resolution designating September 1988 as "National Library Card Sign-up Month"; to the Committee on Post Office and Civil Service.

By Mr. BUECHNER (for himself, Mr. ARMEY, Mr. BALLENGER, Mr. BROWN of Colorado, Mr. BURTON of Indiana, Mr. COBLE, Mr. CRAIG, Mr. DIOGUARDI, Mr. DORNAN of California, Mr. GINGRICH, Mr. HANSEN, Mr. HASTERT, Mr. HEFLEY, Mr. HOLLOWAY, Mr. HUNTER, Mr. HYDE, Mr. INHOFE, Mr. IRELAND, Mr. KEMP, Mr. LATTA, Mr. LIGHTFOOT, Mr. LIVINGSTON, Mr. MOORHEAD, Mr. NIELSON of Utah, Mr. OXLEY, Mr. DENNY SMITH, Mr. SWINDALL, and Mr. SMITH of Texas):

H. Con. Res. 284. Concurrent resolution expressing the sense of Congress with respect to balancing the Federal budget; to the Committee on Government Operations.

By Mr. GEPHARDT:

H. Res. 429. Resolution electing GLENN M. ANDERSON of California, chairman, Committee on Public Works and Transportation; considered and agreed to.

By Mr. BROOKS (for himself and Mr. PICKLE):

H. Res. 431. Resolution honoring Lady Bird Johnson for her years of dedicated service to the people of the United States and her efforts in the beautification of the Nation and congratulating her in her diamond jubilee year; to the Committee on Post Office and Civil Service.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

321. The SPEAKER presented a memorial of the Senate of the State of Hawaii, relative to funds for the development of technology to allow for the effective utilization of ocean resources; which was referred to the Committee on Merchant Marine and Fisheries.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Ms. PELOSI:

H.R. 4439. A bill for the relief of Shen-Yen Kuan, Cheng-Shin Kuan, Yang Su-Chin Kuan, and Chia-Wei Kuan; to the Committee on the Judiciary.

By Mr. WATKINS:

H.R. 4440. A bill for the relief of Priti Rekha Chaudhury Juneja; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 963: Mr. RINALDO.

H.R. 1158: Mr. KENNEDY, Mr. ESPY, and Mr. KOSTMAYER.

H.R. 1587: Mr. CLINGER.

H.R. 1766: Mr. SOLARZ and Mr. LATTA.

H.R. 2119: Mr. NIELSON of Utah and Mr. ORTIZ.

H.R. 2214: Mrs. VUCANOVICH.

H.R. 2537: Mr. BALLENGER and Mr. VALENTINE.

H.R. 2640: Mr. OWENS of New York, Mr. COLEMAN of Missouri, Mr. HAYES of Illinois, Mr. ORTIZ, Mr. PORTER, Mr. BROWN of Colorado, Mr. MADIGAN, Mr. EVANS, Mr. SOLOMON, Mr. ROSE, Mr. BADHAM, Mr. MICA, Mr. FAWELL, Mr. SENSENBRENNER, Mr. FIELDS, and Mr. ROBERTS.

H.R. 2762: Mr. ROWLAND of Connecticut, Mr. ROSE, and Mr. MURPHY.

H.R. 2854: Mr. DWYER of New Jersey and Mr. MARTINEZ.

H.R. 3071: Mrs. JOHNSON of Connecticut.

H.R. 3133: Mr. HOCHBRUECKNER and Mr. TALLON.

H.R. 3193: Mr. MOAKLEY.

H.R. 3215: Mr. GALLEGLY, Mr. MYERS of Indiana, and Mr. MCCANDLESS.

H.R. 3250: Mr. HERGER and Mr. BROOMFIELD.

H.R. 3312: Mr. SWIFT.

H.R. 3314: Mr. JOHNSON of South Dakota, Mr. LUJAN, Mr. GRAY of Pennsylvania, Mr. HOCHBRUECKNER, Mr. LEWIS of Georgia, Mr. STOKES, Mr. FORD of Tennessee, Mr. BUSTAMANTE, and Mr. PARRIS.

H.R. 3363: Mr. JONES of North Carolina.

H.R. 3392: Mr. RANGEL, Mr. BILBRAY, and Ms. PELOSI.

H.R. 3553: Mr. JACOBS.

H.R. 3602: Mr. KOLTER.

H.R. 3791: Mr. FEIGHAN, Mr. LOTT, Mr. PACKARD, and Mr. DIOGUARDI.

H.R. 3794: Mr. BUECHNER, Mr. COMBEST, and Mr. CHANDLER.

H.R. 3809: Mr. FAUNTROY, Mr. LOWRY of Washington, Mr. OWENS of New York, Mr. HAYES of Illinois, Mr. LEWIS of Georgia, Mr. GRAY of Pennsylvania, Ms. PELOSI, Mr. ACK-

ERMAN, Mr. JONTZ, Mr. SOLARZ, Mr. BATES, and Mr. SCHUMER.

H.R. 3845: Mr. MORRISON of Washington.

H.R. 3878: Ms. OAKAR and Mr. ESPY.

H.R. 3891: Mr. BRENNAN, Mr. FRANK, Mr. MFUME, Mrs. BOXER, Mrs. COLLINS, Mr. AKAKA, Mr. BROWN of California, Mr. DEFAZIO, Mr. GUARINI, Mr. GARCIA, Mr. ACKERMAN, Mr. KOSTMAYER, Mr. ST GERMAIN, Mr. FOGLIETTA, Mr. FAZIO, Mr. GRAY of Illinois, Mr. DWYER of New Jersey, and Mr. MAVROULES.

H.R. 3907: Mr. JENKINS, Mr. SCHULZE, Mr. CHAPPELL, Mr. WILSON, Mr. HEFNER, Mr. NATCHER, Ms. PELOSI, and Mr. MCEWEN.

H.R. 3914: Miss SCHNEIDER and Mr. GEJDENSON.

H.R. 3918: Mr. ORTIZ, Miss SCHNEIDER, Mr. LAGOMARSINO, Mr. BATEMAN, Mr. LANCASTER, Mr. BRENNAN, Mr. KONNYU, Mrs. BENTLEY, Mr. BUSTAMANTE, Mr. HUGHES, Mr. SHAW, Mr. SAXTON, and Mr. LEHMAN of Florida.

H.R. 4015: Mr. CAMPBELL, Mr. BRYANT, Mr. LAFALCE, Mr. SUNDQUIST, Mr. RHODES, and Mr. DAVIS of Illinois.

H.R. 4042: Ms. PELOSI, Mr. DE LUGO, Mr. FOGLIETTA, Mr. MARTINEZ, and Mr. MATSUI.

H.R. 4043: Mr. JOHNSON of South Dakota.

H.R. 4083: Mr. DEFAZIO, Mr. TORRES, Mr. HAYES of Illinois, Mr. BERMAN, Mr. LAGOMARSINO, Mr. FAUNTROY, Mr. ROE, Mr. FRANK, Mr. DE LUGO, Mr. SMITH of Florida, Mr. FAZIO, Mr. GARCIA, Mr. SAWYER, Mr. RANGEL, Ms. PELOSI, and Mr. SENSENBRENNER.

H.R. 4089: Mr. FAUNTROY, Mr. STUDDS, Mr. FOGLIETTA, Mr. BOEHLERT, Mr. TOWNS, Mr. LEWIS of California, and Mr. HATCHER.

H.R. 4090: Mr. FASCELL.

H.R. 4115: Mr. THOMAS of Georgia and Mr. PACKARD.

H.R. 4127: Mr. SHARP, Mr. WHITTAKER, Mr. ECKART, Mr. BILBRAY, Mr. NEAL, Mr. BEILENSON, Mr. FROST, Mrs. BOXER, Mr. QUILLEN, Mr. MORRISON of Connecticut, Ms. SLAUGHTER of New York, Mr. FISH, Mr. JEFFORDS, Mr. ROE, Mr. MAVROULES, Mr. WOLPE, and Mr. DORGAN of North Dakota.

H.R. 4128: Mr. BRUCE and Mr. MADIGAN.

H.R. 4132: Mr. FRANK, Mr. MORRISON of Connecticut, Mrs. COLLINS, Miss SCHNEIDER, Mr. DEFAZIO, Mr. GONZALEZ, Mr. GARCIA, Mr. UDALL, Mr. ACKERMAN, Mr. LAFALCE, Mr. LEWIS of Georgia, Mr. FAUNTROY, Mr. FAZIO, Mr. FOGLIETTA, and Mrs. BOXER.

H.R. 4145: Mr. ROWLAND of Georgia and Mr. NICHOLS.

H.R. 4150: Mrs. LLOYD, Mr. MORRISON of Connecticut, Mr. IRELAND, Mr. SMITH of Florida, Mr. MOODY, Mrs. BYRON, Miss SCHNEIDER, Mr. SCHUETTE, Mr. FAUNTROY, Mr. CARPER, Mr. STRATTON, Mr. DEWINE, Mr. DAVIS of Michigan, Mr. TAUKE, Mr. HAYES of Illinois, Mr. VENTO, Mr. MCHUGH, Mr. DAVIS of Illinois, Mr. INHOFE, Mr. FOGLIETTA, Mr. DIOGUARDI, Mr. HOYER, Mr. RICHARDSON, Mr. STAGGERS, Mr. MILLER of Washington, Mr. GALLO, Mr. PETRI, Mr. GAYDOS, Mr. GONZALEZ, Mr. HUGHES, Mr. GORDON, Mr. WHITTAKER, Mr. RIDGE, Mr. SPRATT, Mr. HEFNER, and Mr. HANSEN.

H.R. 4189: Mr. SAXTON, Mr. FISH, and Mr. SMITH of New Hampshire.

H.R. 4193: Mr. PEPPER, Mr. STARK, Mr. FOGLIETTA, and Mr. FISH.

H.R. 4199: Mr. WILSON, Mr. FAUNTROY, Mrs. BENTLEY, and Mr. HAWKINS.

H.R. 4268: Mr. BROWN of California, Mr. WHEAT, and Mr. DWYER of New Jersey.

H.R. 4277: Mr. HOCHBRUECKNER, Mr. SYNAR, Mr. DONNELLY, Mr. MOODY, Mr. FAZIO, Ms. SNOWE, and Mr. VALENTINE.

H.R. 4308: Mr. DE LA GARZA and Mr. UPTON.

H.R. 4357: Mr. COUGHLIN.

H.R. 4364: Mr. WISE, Mr. PENNY, Mr. DYSON, Mr. BOEHLERT, Mr. CHAPMAN, Mr. HORTON, Mr. DONALD E. LUKENS, Mr. LANCASTER, Mr. FUSTER, Mr. ESPY, Mr. VALENTINE, Mr. GUNDERSON, Mr. CRANE, Mr. GRAY of Illinois, Mr. JONTZ, Mr. MYERS of Indiana, Mr. FAUNTROY, and Mrs. BOXER.

H.R. 4377: Mr. DAUB and Mr. BEREUTER.

H.J. Res. 361: Mr. ATKINS.

H.J. Res. 438: Ms. PELOSI, Mr. FLIPPO, and Mr. WILSON.

H.J. Res. 462: Mr. MOODY, Mr. WAXMAN, and Mr. HAYES of Illinois.

H.J. Res. 467: Mr. LIVINGSTON, Mr. MACK, Mr. CHAPMAN, Mr. GREEN, Mr. LEHMAN of California, Mr. HAYES of Illinois, Mr. VENTO, Mr. HUGHES, Mr. CARR, Mr. KASICH, Mr. BUECHNER, Mr. DAVIS of Illinois, Mr. FISH, and Ms. PELOSI.

H.J. Res. 475: Mr. AKAKA, Mr. ANDERSON, Mr. ASPIN, Mr. BERMAN, Mr. BEVILL, Mr. BILBRAY, Mr. BROOMFIELD, Mr. CLINGER, Mr. COLEMAN of Texas, Mr. DAVIS of Michigan, Mr. DEWINE, Mr. DYMALLY, Mr. FOGLIETTA, Mr. FRENZEL, Mr. GRAY of Illinois, Mr. GRAY of Pennsylvania, Mr. HAYES of Illinois, Mr. HILER, Mr. HUTTO, Mr. KASTENMEIER, Mr. KEMP, Mr. LANCASTER, Mr. LELAND, Mr. LEVINE of California, Mrs. LLOYD, Mr. MCCLOSKEY, Mr. MARTIN of New York, Mr. MILLER of Washington, Mr. MINETA, Mr. MOAKLEY, Mr. MOLINARI, Mr. MOODY, Mr. MURTHA, Mr. NEAL, Mr. OWENS of Utah, Mr. PEPPER, Mr. REGULA, Mr. RICHARDSON, Mr. SAVAGE, Mr. SCHUMER, Mr. SISISKY, Mr. SKELTON, Mr. SOLARZ, Mr. STOKES, Mr. TALLON, Mr. TORRES, Mr. VALENTINE, Mr. WILSON, and Mr. YATRON.

H.J. Res. 476: Mr. FAZIO, Mr. PARRIS, Mr. DE LA GARZA, Mrs. BENTLEY, Mr. DARDEN, Mr. STANGELAND, Mr. KASICH, Mr. FOGLIETTA, Ms. PELOSI, and Mr. DAVIS of Illinois.

H.J. Res. 508: Mr. BALLENGER.

H.J. Res. 510: Mr. DWYER of New Jersey, Mr. FAUNTROY, Mr. DONALD E. LUKENS, Mr. MRAZEK, Mr. BUSTAMANTE, Mr. HAYES of Illinois, Ms. KAPTUR, Mr. FRANK, Mr. FROST, Mr. DIOGUARDI, Mr. MFUME, Mr. HOCHBRUECKNER, Mr. LEVIN of Michigan, Mr. HUGHES, Mr. ACKERMAN, Mr. HORTON, Mr. DINGELL, Mr. CARPER, Mr. BORSKI, Mr. MCGRATH, Mr. LIPINSKI, and Mr. FISH.

H.J. Res. 516: Mr. CHAPMAN and Mr. LANCASTER.

H.J. Res. 524: Mr. HORTON, Mr. RAHALL, Mr. FOGLIETTA, and Mr. HOYER.

H.J. Res. 528: Mr. NEAL, Mr. BORSKI, Mr. ANDERSON, Mr. HORTON, and Mr. FISH.

H.J. Res. 540: Mr. SMITH of Florida, Mr. HUNTER, Mr. COLEMAN of Missouri, Mr. FAZIO, Mr. HORTON, Mr. LEVIN of Michigan, Mr. GILMAN, Mr. ROE, Mr. MCGRATH, Mrs. BOXER, Mr. ERDREICH, and Mr. UDALL.

H. Con. Res. 241: Mr. FISH.

H. Con. Res. 263: Mr. DAUB.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1049: Mr. MAVROULES.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

155. By the SPEAKER: Petition of Mr. Arthur D. Ward, Orlando, FL, relative to the U.S. Congress; to the Committee on the Judiciary.

156. Also, petition of the City Council, Garden City, MI, relative to the proposed budget change of the Urban Mass Transportation Authority; to the Committee on Public Works and Transportation.

157. Petition of the City Council, Inkster, MI, relative to the Federal Mass Transit Budget level, to the Committee on Public Works and Transportation.